

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA : 13-CR-607 (JFB)

-against- : U.S. Courthouse

: Central Islip, New York

PHILLIP A. KENNER
a/k/a "Philip A. Kenner",
and :
TOMMY C. CONSTANTINE
a/k/a "Tommy C. Hormovitis"

Defendants : June 1, 2015

- - - - - X 9:30 a.m.

BEFORE:

HONORABLE JOSEPH F. BIANCO
United States District Judge
and a jury

APPEARANCES:

For the Government: KELLY T. CURRIE
Acting United States Attorney
Federal Plaza
Central Islip, New York 11722
BY: JAMES M. MISKIEWICZ
SARITHA KOMATIREDDY
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BY: RICHARD HALEY

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2 Tommy C. Constantine 300 Old Country Road
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BY: ROBERT P. LaRUSSO
and
4 ANDREW L. OLIVERAS
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5 Oceanside, New York 11572
6

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10

11 ***

12 THE CLERK: All rise.

13 THE COURT: Please be seated.

14 THE CLERK: Calling case 13-CR-607, U.S.A. versus
15 Kenner and Constantine.

16 Counsel, please state your appearance for the
17 record.

18 MR. MISKIEWICZ: Good morning, Your Honor.

19 James Miskiewicz, for the government.

20 THE COURT: Good morning, Mr. Miskiewicz.

21 MS. KOMATIREDDY: Good morning, Your Honor.

22 Saritha Komatireddy, for the government.

23 THE COURT: Good morning, Ms. Komatireddy.

24 MR. LaRUSSO: Good morning, Judge.

25 Robert LaRusso for Mr. Constantine.

1 THE COURT: Good morning, Mr. LaRusso,
2 Mr. Constantine.

3 MR. HALEY: Good morning, Your Honor.
4 Richard Haley, for Mr. Kenner.

5 THE COURT: Good morning, Mr. Haley and Mr. Kenner.
6 All right. The jurors are all here. We ready to go?

7 MR. MISKIEWICZ: We tried, but we are one witness
8 short of what we anticipated would fill out the day.
9 Mr. Gaarn is unavailable. So we have three witnesses lined up
10 for today; Darryl Sydor, Steven Ross, James Grdina. That will
11 take up most of the day, I think. We tried, but we are just
12 short, Your Honor. I apologize for that.

13 THE COURT: Okay. Some of the jurors want to know
14 whether we were going to sit Wednesday and Thursday. I'm
15 going to tell them we are barring some unforeseen event we'll
16 sit Wednesday, Thursday. I think I'm going to tell those two
17 jurors to pay attention. We'll come to their matter later in
18 the week. I think that's the best way to handle it.

19 Anyone disagree?

20 MR. MISKIEWICZ: No, Your Honor.

21 MR. LaRUSSO: No, Your Honor.

22 MR. HALEY: Your Honor, my only comment, I take it
23 that Your Honor made the decision to excuse those two jurors.
24 I know one had a problem with two days, the other had a
25 problem with one day. In order to accomplish the Wednesday

1 and Thursday sitting -- by the way, I'm not suggesting you
2 don't do that. We're going to lose two jurors, then?

3 THE COURT: That's my current intention. The reason
4 I'm not excusing them now is we don't know what will happen if
5 we have a bunch of jurors come down with an illness or other
6 issue and not being able to sit Wednesday and Thursday. We'll
7 still have them here.

8 MR. HALEY: Thank you, Your Honor.

9 THE COURT: Let's bring in the jury.

10 THE CLERK: All rise.

11 (Whereupon the jurors enter the courtroom at 9:52
12 a.m.)

13 THE COURT: Please be seated.

14 Good morning, members of the jury.

15 ALL JURORS: Good morning.

16 THE COURT: Good to see you back. Before we
17 continue with the trial, I know some jurors are asking what
18 did I decide with respect to Wednesday and Thursday of this
19 week. It's my intention to sit on Wednesday and Thursday of
20 this week. I have spoken to the lawyers. And we are still
21 behind, in my estimate. So I don't want to lose two days.

22 So my current intention is, we have four alternates
23 left, to excuse those jurors when their events come up and use
24 the alternates to replace them. But I want to emphasize to
25 Juror No. 3 and Juror No. 12, you need to continue to pay

1 attention even though my intention is to excuse you later in
2 this week because as you've seen from this trial, unforeseen
3 things can happen. Although my current intention is to sit
4 Wednesday and Thursday, I want you to stay until the time for
5 you to leave for your obligations.

6 So we'll continue with the trial. I'll ask the
7 government to call its next witness.

8 MS. KOMATIREDDY: The government calls Darryl Sydor.

9 THE COURT: Mr. Sydor, come up to the witness stand
10 over here, and stand once you get there.

11 THE CLERK: Raise your right hand.

12 (Witness sworn.)

13 THE WITNESS: I do.

14 D A R R Y L S Y D O R

15 called as a witness, having been first
16 duly sworn, was examined and testified
17 as follows:

18 THE CLERK: Please state your name, and spell it for
19 the record.

20 THE WITNESS: Darryl Sydor.

21 D-A-R-R-Y-L, middle initial M, S-Y-D-O-R.

22 THE COURT: Be seated, Mr. Sydor.

23 Pull the microphone closer to you, and keep your
24 voice up.

25 Go ahead.

SYDOR-DIRECT-KOMATIREDDY

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1 MS. KOMATIREDDY: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MS. KOMATIREDDY:

4 Q Good morning, Mr Sydor.

5 A Good morning.

6 Q Where do you live, sir.

7 A Minnesota.

8 Q What do you do for a living?

9 A I am a NHL hockey coach.

10 Q What team?

11 A Minnesota Wild.

12 Q What did you do before that?

13 A I was an NHL player for 18 years.

14 Q How old were you when you got your start in the NHL
15 league?

16 A I played a half a year in '91, '92, at the age of 19.
17 The first full season was 1993. I was 20.

18 Q Can you walk us through the different teams you played
19 on?

20 A I played for six teams. I started out with Los Angeles
21 for five seasons. I got traded to Dallas. After Dallas, I
22 was there for seven years, I got traded to Columbus for a
23 quick stint, six months. Went to Tampa Bay. Got traded there
24 in January. Went to Tampa Bay '04 -- '03-'04 season. I was
25 there close to three years. Went back to Dallas for a season.

SYDOR-DIRECT-KOMATIREDDY

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1 After that I went to Pittsburgh for a couple of years. Traded
2 back to Dallas. And then went on to -- final season was with
3 St. Louis.

4 Q That was '09 - '10.

5 A That would have been '09 - '10, I believe, yes.

6 Q Now, when you started playing hockey professionally, how
7 far did you get in school at that point?

8 A I finished my grade 12 in playing hockey in Canada.

9 Q What was the last job you had had, if any, before you
10 were playing hockey professionally?

11 A During the summer of my junior career, my dad was a
12 Journeyman in the City. He wanted me to kind of get down and
13 learn a little bit of the trades. I worked for my uncle for
14 PDQ Plumbing for half a summer.

15 Q What does PDQ stand for?

16 A Pretty Damn Quick Plumbing.

17 Q How much did you make when you were working for your
18 uncle during the summer?

19 A That was more for experience. He just wanted me to, you
20 know, dig the ditches, doing the grunt work for my uncle.

21 Q Just give us an idea what you made during that time, if
22 anything?

23 A I can't recall taking a paycheck home. So maybe \$10 an
24 hour.

25 Q How much did you make in your first professional hockey

SYDOR-DIRECT-KOMATIREDDY

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1 contract?

2 A My first NHL contract was a signing bonus of \$165,000,
3 with a salary of 150.

4 Q And you said you played for half a season and then you
5 played a full season, is that right?

6 A I played 48 games in '91 -'92. Then they sent me back to
7 my junior team after the World Junior's. I played for my
8 country. Or the World Juniors Tournament at that age. And
9 then went back to juniors for that year.

10 Q When you got drafted and went to the L.A. Kings, how much
11 did you make in that first year that you were there?

12 A Well, I think my first contract was -- I know my salary
13 was 150. I thought that was -- you know, 165 was my signing
14 bonus. Again, at that age that's a lot of money.

15 Q Did you a plan what to do with that money?

16 A My mom was a banker. She was just helping me out. I was
17 basically just putting it into a bank, a Nova Scotia bank
18 account. Not really a plan.

19 Q Did there come a time when you thought about investing
20 the money?

21 A Yes. Through help with my mom. She always wanted me to
22 save my money.

23 Q Did there come a time you got help from someone else
24 other than your mom?

25 A Yeah. So -- excuse me -- after my first contract, which

SYDOR-DIRECT-KOMATIREDDY

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1 I was drafted pretty high, I had an agent, a Toronto by the
2 name of Don Meehan. He had a lot of high picks. After, there
3 was a trend. And you know, after you were drafted, you kind
4 of lost touch with him. So I went a different way after that
5 contract with another agent out of Los Angeles. You try to
6 call him and -- you know, obviously, I got drafted and he got
7 paid. Every year he drafted players. So he went to other
8 people and shuffled me down. I basically called and just
9 would say I was somebody different, then he'd answer the
10 phone. Or his secretary would talk to him. So anyway, that
11 relationship went south. I changed agents. And that's when I
12 met my first financial advisor Scott Bye.

13 Q How long did you stay with Mr. Bye?

14 A That would have been probably about three seasons. I'd
15 been with him -- I got rid of him after the -- after me and my
16 wife got married in 1995.

17 Q When you got rid of him, what did you do next?

18 A During '95 - '96 is when I got married, in the summer of
19 '95. So the next season I wrote him a letter saying I was
20 going in a different direction. And that's when I met Phil
21 Kenner.

22 Q How did you meet Mr. Kenner?

23 A Actually, my wife met Phil. I was playing for the Los
24 Angeles Kings at the time. I believe he was in town for --
25 meeting with another player that I was playing with, Dmitri

SYDOR-DIRECT-KOMATIREDDY

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1 Khristich. And I believe he sat with my wife during the game.
2 And then I met him, I believe, the next day in the hall of the
3 hockey rink in Los Angeles Forum. He introduced himself to
4 me.

5 Q Would you recognize him if you saw him today?

6 A Yes.

7 Q Is he in the courtroom?

8 A Yes. He's sitting at the table.

9 MR. HALEY: The identification is conceded.

10 THE COURT: The identification is conceded.

11 Q When you got to know Mr. Kenner through these
12 conversations over the time you got to know him, what did he
13 tell you about himself?

14 A That he was working with players. He was a financial
15 advisor, I believe in Boston at the time. Derek Sanderson,
16 which was a hockey player, that name rang a bell, he was part
17 of the firm. He wanted to help me out, be my financial
18 advisor.

19 Q Did you end up hiring Mr. Kenner to be your financial
20 advisor?

21 A Yes.

22 Q Did you pay him a regular fee for his work?

23 A Yes.

24 Q Can you describe it in general terms, the nature of the
25 fee?

SYDOR-DIRECT-KOMATIREDDY

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1 A I believe it was a quarterly fee.

2 Q Now, when Mr. Kenner began serving as your financial
3 advisor what kinds of investments did he propose at the
4 beginning?

5 A Well, at the time of the switch was, Scott Bye was a
6 financial advisor that talked -- you know, I'm a grade 12
7 education hockey player and he talked in the financial world
8 talk. I wasn't really getting it. And after speaking with
9 Phil, it was more talking to me in my world and a lot of
10 things that I guess I would understand easier. And we started
11 off pretty conservative with just stocks and bonds.

12 Q Did there come a time when that changed? Did he mention
13 other kinds of things?

14 A Yes. After -- you know, after we -- I believe we got
15 settled with stocks and bonds, we started venturing out to
16 more -- I guess you would say risky investments.

17 Q I'm going to talk about a few of those investments.
18 Before I do that, when Mr. Kenner was your financial advisor
19 did you have any discussion about him having a power of
20 attorney for you?

21 A Yeah. I offered to give him power of attorney. As a
22 hockey player, during the season I was focused on hockey.
23 That was what I did from two years to -- two years old.

24 Q What was your understanding of the -- in terms of the
25 power of attorney, what was the agreement between you and

SYDOR-DIRECT-KOMATIREDDY

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1 Mr. Kenner?

2 A Well, playing hockey, you know, I'd be -- you travel a
3 lot. If there's things that were going to be happening and I
4 wasn't able to do it, I gave him a power of attorney to do it.
5 As long as it came through and I knew what was going on.

6 Q "As long as it came through," what does that mean?

7 A Well, as long as we talked about it. I wouldn't give him
8 the power of attorney to do something on my behalf without me
9 knowing about it.

10 Q I'm going to focus your attention on an investment in
11 something called the Hawaii project. Does that sound
12 familiar?

13 A Yes.

14 Q How did you hear about the Hawaii project?

15 A Just through conversation. I believe that's the Little
16 Isle IV. We were going to put money into some land, supposed
17 to be a great piece of property. A sugar cane farm, I believe
18 it was. And then, you know, purchase the land, develop it and
19 then sell it.

20 Q You said "through conversation." Conversations with
21 whom?

22 A With Phil Kenner.

23 Q When you were having this conversation with Mr. Kenner,
24 did you come to a decision where you did decide to invest in
25 that project?

SYDOR-DIRECT-KOMATIREDDY

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1 A Yes.

2 Q How much did you invest?

3 A \$500,000, I believe.

4 Q That number, when was that number mentioned -- withdrawn.

5 Who came up with that number in your conversation?

6 A Phil Kenner.

7 Q Did you talk about a line of credit at all?

8 A Not at that time. Not a line of credit.

9 Q Did he say anything about an additional \$100,000?

10 A Yes. I remember a conversation about another 100,000
11 line of credit.

12 Q Now, did you also talk about -- around this time that you
13 were talking to Mr. Kenner about Hawaii, where were your bank
14 accounts?

15 A Well, my personal bank accounts were in Bank of America.
16 I had Northern Trust with Charles Schwab.

17 Q Had you talked to Mr. Kenner at all about moving accounts
18 and where your bonds were?

19 A I know we had a conversation about transferring the bonds
20 from one to the other, yes.

21 Q Did he ever tell you why?

22 A I can't really recall why.

23 Q Focusing on the Hawaii project. At the time that you
24 decided to invest in Hawaii, did Mr. Kenner tell you anything
25 about money in Hawaii going to Mexico?

SYDOR-DIRECT-KOMATIREDDY

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1 MR. HALEY: I just object to the leading nature.
2 Ask what they spoke about. I object to the leading question.

3 MS. KOMATIREDDY: I'll withdraw it, Your Honor.

4 Q At the time that you were investing in the Hawaii
5 project, did you know of Tommy Constantine? That was 2003,
6 2004.

7 A I don't know.

8 Q Did Mr. Constantine, to your knowledge, have any
9 involvement in the Hawaiian project?

10 A No.

11 Q Did you authorize any of your money in the Hawaiian
12 project to go to Mr. Constantine?

13 A No.

14 Q Did Mr. Kenner tell you about who else would be investing
15 in the Hawaiian project, if anyone?

16 A I think through conversations, you know, just other
17 hockey players.

18 Q I'm going to name a couple of hockey players and ask you,
19 at that time, 2003, 2004, did you have any loans out to other
20 professional hockey players?

21 A No.

22 Q Sergei Gonchar, Mattias Norstrom, Glenn Murray, Michael
23 Peca?

24 A No.

25 Q Did they loan you any money?

SYDOR-DIRECT-KOMATIREDDY

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1 A No.

2 Q Now, later -- you discussed a few years later just
3 talking about where it was going. Did you have any
4 conversations with Mr. Kenner about Lehman?

5 A Yes. I don't exactly remember the whole conversation.
6 But it does -- you know, Lehman Brothers was coming into Cabo
7 in Mexico and, I guess, solidify things down there.

8 Q Is that what he told you about it? Is there anything
9 else that he told you about it?

10 A That, and then I think the 100,000 would be -- once they
11 get that -- once Lehman Brothers got involved, the 100,000 was
12 to come back.

13 Q I'm going to fast forward to 2009 and show you what is in
14 evidence as Exhibit 2118, 2119, and 2120.

15 (Hanging.)

16 Did you have a chance to look at those before you
17 came to court today?

18 A Yes.

19 Q I will publish it to the jury, 2118.

20 These appear to be letters from Northern Trust Bank
21 to you.

22 A Yes.

23 Q Did you receive any of these letters in February or March
24 of 2009?

25 A No. I first saw these the other day.

SYDOR-DIRECT-KOMATIREDDY

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1 Q Turning to 2119, the letter entitled Notice of Default
2 and Intent to Sell Collateral. 2120, a letter entitled Notice
3 of Exclusive Control.

4 When you testified that you first saw them the other
5 day, can you be specific? What other day?

6 A About a week and a half ago when I came the first time to
7 testify. Something happened with someone's mom and I didn't
8 stay. But that's when I first saw the documents.

9 Q I'm going to hand you what's in evidence as Government
10 Exhibit 2135.

11 (Handing.)

12 Did you have a chance to look at that before you
13 came to court today?

14 A The same time I saw the other papers for the first time.

15 MR. HALEY: Which one is this?

16 MS. KOMATIREDDY: Here.

17 (Handing to counsel.)

18 Q Just looking at this loan, it appears to be in your name.
19 In 2004, do you see that balance on the right side going from
20 zero to 400,000 to a million?

21 A Yes.

22 Q Did Mr. Kenner ever tell you about a loan in your name
23 from Northern Trust Bank of that amount?

24 A No.

25 Q You talked about how he had a power of attorney where you

SYDOR-DIRECT-KOMATIREDDY

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1 authorized him to make transactions for you when he checked
2 with you first. Did he check with you to see about, for
3 example, this note increase of a million dollars in December
4 of 2004?

5 A No. Because I would have -- this would have -- bring up
6 red flags for me and I would have asked a lot of questions. I
7 wouldn't have allowed this.

8 Q What about in February 2005 where there's another note
9 increase of \$200,000. The loan goes up to 1.2 million. Did
10 he check with you about that?

11 A No.

12 Q I'm going to hand you what is in evidence as Government
13 Exhibit 2169.

14 (Handing.)

15 This is an account statement for the Darryl Sydor
16 account statement for Northern Trust. Do you see that?

17 A The first page?

18 Q I'm looking at the header right now.

19 A Yes.

20 Q I'm going to turn to page 11 of this document, March 31,
21 2009. Do you see an entry there, "Payment to or for benefit
22 of client"?

23 A Yes.

24 Q It says, "Pay Northern Trust for the benefit of Darryl
25 Sydor. Represents payoff of loan." Do you see that?

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1 A Yes.

2 Q In the amount of \$866,200.86, is that right?

3 A Yes.

4 Q This account, Mr. Sydor, fair to say this bond account
5 was your retirement fund?

6 A Yeah. This is a -- yes. Yes.

7 Q Did you know in March of 2009 that the \$866,000 was --
8 your retirement fund was going to pay off a loan in your name?

9 A No.

10 Q When did you first find out about that?

11 A The same time I seen these papers, I saw these.

12 Q When was that?

13 A About a week and a half ago.

14 Q Did Mr. Kenner ever tell you?

15 A Not to pay off a loan, no.

16 Q I'm going to turn your attention to another investment.
17 Are you familiar with the company called Eufora?

18 A Yes.

19 Q Tell us about who first told you about Eufora?

20 A I remember a conversation. I was going, at the time, to
21 Columbus. A conversation with Phil Kenner about Eufora, a
22 prepaid credit card company that was supposedly a good
23 investment.

24 Q And what was the purpose of the conversation?

25 A An explanation on what it was, was going to be. And then

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1 I believe we talked about how much to put in there.

2 Q What did he tell you about what kind of company it was?

3 A It was a prepaid credit card company that, you know,
4 people would use. And that's pretty much what I knew about
5 it.

6 Q You said you were in Columbus at the time. Was that the
7 '03 - '04 season, for the Blue Jackets?

8 A Yeah. I got traded in January of '04 to Tampa Bay. It
9 was before we talked, yeah.

10 Q So it would have been before January of '04?

11 A Yes.

12 Q When you had that conversation, did you decide to invest
13 in Eufora?

14 A Yes.

15 Q Approximately how much did you invest?

16 A I believe 200.

17 Q \$200,000?

18 A I believe so.

19 Q Did there come a time years later that you talked about
20 Eufora again?

21 A Yes. I believe there was another -- excuse me -- another
22 time where he asked for another \$8,700 to basically get it
23 over the hump and get it finalized.

24 Q So let me just focus your attention, is this
25 approximately 2008?

SYDOR-DIRECT-KOMATIREDDY

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1 A I believe so, yes.

2 Q I'm going to show you what's marked as Government
3 Exhibit 5004.

4 (Handing.)

5 Q Take a look at that. In this conversation of getting
6 Eufora over the final hump, did you decide to invest again?

7 A Well, seeing this, yes, I guess I did.

8 Q Looking at Government Exhibit 5004, does that refresh
9 your recollection of how much money you put in?

10 A I'm trying to think of the dates it was.

11 Q Okay.

12 A Yes.

13 Q How much did you invest in Eufora for the final push?

14 A Well, it's saying \$50,000 here that he wired in.

15 Q Does that sound around right?

16 A Yes. I think it's starting to come back.

17 Q So at this time, let's go back to your conversation when
18 Mr. Kenner is talking to you about the final push. What did
19 he say the money was going to be used for?

20 A Well, for Eufora. Just to, you know, get it over the
21 hump and get everything finalized, in production, and get it
22 out there for everybody to use, and to make money.

23 MS. KOMATIREDDY: At this time, the government
24 offers Government Exhibit 5004 by stipulation.

25 THE COURT: Any objection?

SYDOR-DIRECT-KOMATIREDDY

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1 MR. LaRUSSO: No, Your Honor.

2 MR. HALEY: No, sir.

3 THE COURT: Government 5004 is admitted.

4 (So marked as Government Exhibit 5004 in evidence.)

5 Q Take a look at this, Mr. Sydor. You testified earlier
6 that Mr. Kenner had a power of attorney on your behalf,
7 correct?

8 A Yes. It's not in place any longer. I was traveling at
9 the time.

10 Q When you decided to invest in Eufora, did Mr. Kenner tell
11 you that money would go to an entity called Constantine
12 Management Group?

13 MR. HALEY: Can I just object to the leading nature
14 of it?

15 THE COURT: Sustained as to form.

16 MR. HALEY: Thank you.

17 Q Where did you think the money -- where did Mr. Kenner
18 tell you the money was going?

19 A For the investment in Eufora.

20 Q At that time, did you know what the Constantine
21 Management Group was?

22 A No. I don't recall that.

23 Q Did you authorize money to go to Constantine Management
24 Group?

25 A I don't believe so.

SYDOR-DIRECT-KOMATIREDDY

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1 Q I'm going to show you what's in evidence as Government
2 Exhibit 1709. If you look at your screen there, I'm going to
3 show you what is a bank record for Constantine Management
4 Group for July 2008. Turning to page 2, do you see July 8,
5 2008, a wire in of \$50,000 in the name of Darryl Sydor?

6 A Yes.

7 Q Turning to page 3, look at the July 8th, the wire is out.
8 Do you see a wire out of \$28,000 to PEII Publishing?

9 A Yes.

10 Q Did you authorize any of your money to go to PEII
11 Publishing?

12 A I have no idea what PEII Publishing is.

13 Q Well, did you authorize any of your money to be used for
14 Playboy Enterprises?

15 A No.

16 Q Now, at the time that you invested in Eufora did the
17 defendant say anything to you about your money being used to
18 buy out other investors?

19 A No.

20 Q To buy out Tommy Constantine?

21 A No.

22 Q Or to buy out Phil Kenner?

23 A No.

24 Q Would that have been important to you in deciding whether
25 to give money to Eufora?

SYDOR-DIRECT-KOMATIREDDY

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1 A Yes.

2 Q Why?

3 A I would ask a lot of questions about what's going in
4 here.

5 Q Finally, I'm going to turn your attention to something
6 called a Global Settlement Fund. Does that sound familiar to
7 you?

8 A Yes.

9 Q Approximately where were you in May of 2009? Where were
10 you in your playing career?

11 A May 2009. May 2009 I would still be in Dallas.

12 Q Okay.

13 A I think I had surgery that year for injuries.

14 Q Would you tell us how you heard about the Global
15 Settlement Fund?

16 A Through Phil again. The Global Settlement Fund was going
17 to be funds to use against lawyer fees and different stuff for
18 Mexico investments.

19 Q Okay. And when you say "different stuff for Mexico
20 investments," did you have other investments in Mexico, ones
21 we haven't talked about so far?

22 A I had the golf course in Cabo and then the North Property
23 Investment.

24 Q How did the Global Settlement Fund relate to those Mexico
25 investments, as it was explained to you? Sorry. Let me

SYDOR-DIRECT-KOMATIREDDY

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1 rephrase that question.

2 What did Phil say the purpose of the Global
3 Settlement Fund was in connection to the investments?

4 A It was going to be to -- you know, legal fees, lawyer
5 fees for trying to get all this stuff that's going out to Cabo
6 with that investment of the golf course. Just lawyer fees and
7 legal fees for that.

8 Q Did you decide to give money to the Global Settlement
9 Fund?

10 A Yes.

11 Q Approximately how much?

12 A I believe it was about 250. 200 or 250.

13 Q I'm going to show you what's in evidence as Government
14 Exhibit 1503.

15 (Hanging.)

16 Take a look at that. Is that a fair collection of
17 your contributions to the Global Settlement Fund?

18 A Yes.

19 Q Now, you mentioned that the money was going to be used
20 for different legal fees for Mexico. At that time, did you
21 authorize your money to be used for any other kind of losses?

22 A No.

23 Q Did you know anything about a lawsuit between Mr. Kenner
24 and his secretary Kristie Myrick?

25 A Yes, I knew of the lawsuit.

SYDOR-DIRECT-KOMATIREDDY

2176

1 Q Did Mr. Kenner tell you that any money from the Global
2 Settlement Fund would be used for that lawsuit?

3 A No.

4 Q Did you authorize money that went into the Global
5 Settlement Fund to be used for the Myrick lawsuit?

6 A Not for the Myrick lawsuit.

7 Q Did you know anything about a lawsuit by other hockey
8 players; Juneau, Moreau, and Nolan?

9 A Yes.

10 Q At the time that you had this conversation about the
11 Global Settlement Fund, did Mr. Kenner tell you about money in
12 the fund being used for those lawsuits?

13 A No.

14 Q Did you authorize any of your money to go to those
15 lawsuits?

16 A No.

17 Q I'm going to show you what is marked as Government
18 Exhibit 6603.

19 (Hanging.)

20 Is that your e-mail at the top, Mr. Sydor?

21 A Yes, it is.

22 Q Is that the address in how you communicated with
23 Mr. Kenner?

24 A I'm sorry?

25 Q Is that the e-mail address you would use to contact

SYDOR-DIRECT-KOMATIREDDY

2177

1 Mr. Kenner?

2 A Yes.

3 Q Just looking over this e-mail, does that appear to be a
4 true and accurate copy of the e-mail conversation between you
5 and Mr. Kenner in May of 2009?

6 A It's my e-mail. I don't recall seeing all of this, no.

7 MS. KOMATIREDDY: The government will offer 6603
8 with that caveat.

9 MR. HALEY: I consent.

10 MR. LaRUSSO: No objection, Your Honor.

11 THE COURT: 6603 is admitted.

12 (So marked as Government Exhibit 6603 in evidence.)

13 Q Did you have a chance to look at this before coming into
14 court today, Mr. Sydor?

15 A Yes. The same as all these other papers here, the other
16 day.

17 Q Looking at it, there's an e-mail from Mr. Kenner at the
18 bottom, a response from you at the top.

19 A Yes.

20 Q Now, this e-mail mentions a couple of different
21 investments, including Eufora, an Air Park real estate
22 project, a Falcon aircraft, and two complex condominiums.

23 Do you see that?

24 A Yes. Yeah, I see it all. I mean, right now.

25 Q Now, at the time that you talked to Mr. Kenner, before

SYDOR-DIRECT-KOMATIREDDY

2178

1 you put money into the Global Settlement Fund, did he mention
2 any of that money being used for any of those projects?

3 A No. It was for the global settlement of the Mexico
4 situation. As you can see, it's sent from my Blackberry. I
5 probably read over the first little bit, the transfer to Ron
6 Richards for the Global Settlement Fund. On the Blackberry, I
7 probably didn't read this whole e-mail. I would have
8 questioned, you know, the Palms, the airplane, the air park.
9 I mean, I used private planes at the time, but I never really
10 wanted to purchase a plane or invest in an airplane. And I
11 know for a fact that I didn't want to be part of the Palms.

12 Q Why do you know that for a fact?

13 A I've been to Las Vegas maybe twice. I didn't see any --
14 I just didn't want to be part of it.

15 Q Now, just going back to the wire in front of you,
16 Government Exhibit 1503. What's the date of that wire?

17 A May 11th, 2009.

18 Q Going back to the e-mail, 6603. What's the date of that
19 e-mail?

20 A May 18th, 2009.

21 Q And the one that Mr. Kenner sent you?

22 A May 17th, 2009.

23 Q So I just want the record to be very clear. At the time
24 that you put your money into the Global Settlement Fund, did
25 you authorize your money to go to Eufora?

SYDOR-DIRECT-KOMATIREDDY

2179

1 MR. HALEY: Objection.

2 THE COURT: What's the objection?

3 MR. HALEY: Again, the leading nature. It's
4 repetitive.

5 THE COURT: No. Again, as discussed before, if
6 you're asking about a particular item in an e-mail --

7 MR. HALEY: I guess my objection, then, goes to the
8 form. The prosecutor begins just so the record is crystal
9 clear. I don't think that's proper.

10 THE COURT: Just ask the question.

11 MR. HALEY: Thank you.

12 Q Did you authorize any of your money in the Global
13 Settlement Fund to be used for Eufora?

14 A No.

15 Q Would you have put money into the Global Settlement Fund
16 if you knew any of it would go to Eufora?

17 A No. It was for -- to get everything situated and in the
18 right direction for Mexico. That's what I was -- under the
19 assumption.

20 Q At the time you put money into the Global Settlement
21 Fund, did you authorize any of your money to go to the Avalon
22 Air Park or hangars in Scottsdale, Arizona?

23 A No.

24 Q Did you authorize any of your money to go -- to buy or
25 pay for a Falcon 10 aircraft?

SYDOR-DIRECT-KOMATIREDDY

2180

1 A No.

2 Q Did you authorize any of your money to go towards two
3 Palms Place condominium units?

4 A No.

5 Q Would you have put money into the Global Settlement Fund
6 if you knew any of that money would go to any one of those
7 projects?

8 A No.

9 Q Did there come a time when you talked to Mr. Kenner about
10 additional money for the Global Settlement Fund?

11 A Yes.

12 Q Can you tell us about that?

13 A I think there was another situation where we needed more
14 money than just the \$8,700, which I stated earlier. Saying
15 that -- after more money, asking if I can send 8,600. I don't
16 remember exactly.

17 Q Do you remember approximately what time frame that was?

18 A I can't sit here and recall the date.

19 Q I'm going to hand you what's been marked as DS-1. Take a
20 look at that. Without reading any of the content -- or you
21 can look at it, sorry. Just don't read it out loud.

22 A Okay.

23 (Handing.)

24 Q Does that refresh your recollection as to the time frame
25 that this conversation happened?

SYDOR-DIRECT-KOMATIREDDY

2181

1 A Yes.

2 Q Approximately when was it?

3 A April 5th, 2011.

4 Q At the time when Mr. Kenner is asking you for money, what
5 was he asking you for the money to be used for?

6 A Just more -- you know, everything's going in the right
7 direction, more legal fees for Mexico.

8 Q Did you talk about what happened to the GSF?

9 A Not specifically where all the money went. But I did
10 raise the question, where is this all going?

11 Q How did Mr. Kenner respond?

12 A Just it's a long, ongoing battle with, you know, the Ken
13 Jowdy situation and Mexico. And then asked for more money.

14 Q Did you give it to him?

15 A No.

16 Q Why not?

17 A I thought I'd put enough in already.

18 Q Finally, Mr. Sydor, did there come a time when you were
19 served with a grand jury subpoena?

20 A Say that again?

21 Q Did there come a time when you were served with a grand
22 jury subpoena?

23 A Yes.

24 Q Did you discuss that subpoena with Mr. Kenner?

25 A Yes.

SYDOR-DIRECT-KOMATIREDDY

2182

1 Q Can you tell us about that?

2 A It was after my playing dates. I retired one day, the
3 next day I signed up to be an assistant coach in Houston with
4 the hockey club. I was in Houston at the time. I started
5 getting these phone calls about the subpoena. So right away I
6 questioned -- I called Phil, asked him, you know, what should
7 I do? I remember him saying just don't answer the door. You
8 know, don't let them know where you are.

9 It got to the point where I just finally said, you
10 know what, a gentleman called and I said, you know, I'm going
11 to be at the rink at, you know, certain -- our hours are a lot
12 longer than hockey players. Just meet me at the rink. I'll
13 be there till 2 o'clock in Houston. And he dropped the papers
14 off or whatever you do to subpoena me. That was it. Then I
15 went to the grand jury.

16 Q You went, and where did you end up going to testify?

17 A I came here to New York. The exact date, I don't
18 remember, but I remember flying in. One day I asked Phil who
19 was going to be there. Ron Richards was going to talk to us
20 and be our counsel at that time of this, and Phil informed me
21 what was going on.

22 Q What did he say was going on?

23 A I believed it was -- from sitting in Ron Richards' hotel
24 room with a couple of other players that were doing the same
25 thing, I thought it was going to be mostly about this Mexico

1 situation.

2 Q And that was just based on what Mr. Kenner told you?

3 A Yes. And then he'd say Ron will inform you about it.

4 MS. KOMATIREDDY: No further questions.

5 THE COURT: Any cross-examination?

6 MR. HALEY: Yes, sir.

7 May I see Government Exhibits 2118 and 2119?

8 MR. LaRUSSO: Your Honor, I apologize. May I have a
9 brief side-bar?

10 THE COURT: Yes.

11 (Whereupon a side-bar conference was conducted.)

12 (Matter continued on the next page.)

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1 (Side-bar conference.)

2 MR. LaRUSSO: Your Honor, the conversation that
3 Mr. Sydor had with Mr. Kenner, which is really not related to
4 my client, it's outside the scope, will you just instruct the
5 jury that that part of the testimony does not apply to my
6 client? You can do it later in the trial, I just want the
7 record to be clear.

8 THE COURT: Yes, I will give them the instruction
9 that the statements Mr. Kenner made to being a witness can
10 only be used against Mr. Kenner and are not admissible against
11 Mr. Constantine.

12 MS. KOMATIREDDY: Just with respect to the grand
13 jury testimony?

14 MR. LaRUSSO: Just that, yes.

15 (Whereupon the side-bar conference was concluded.)

16 (Matter continued on the next page.)

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SYDOR-CROSS-HALEY

2185

1 (Matter continued in Open Court.)

2 THE COURT: Members of the jury, I just want to give
3 you an instruction regarding the last portion of the testimony
4 by Mr. Sydor regarding a conversation he testified about with
5 Mr. Kenner regarding the grand jury. Those statements are
6 admissible only against Mr. Kenner. They're not admissible
7 against Mr. Constantine.

8 Okay. Go ahead, Mr. Haley.

9 MR. HALEY: Thank you, Your Honor.

10 CROSS EXAMINATION

11 BY MR. HALEY:

12 Q Mr. Sydor, my name is Rick Haley. I represent Phil
13 Kenner. Though the clock may say a quarter to 3:00, sir, I'm
14 going to wish you good morning.

15 Sir, you testified that it was only a few days ago
16 that you saw some documents for the first time.

17 Do you recall that testimony?

18 A Yes.

19 Q And where were you when you say that you saw those
20 documents for the first time?

21 A I was here before the situation happened with somebody's
22 mother. So...

23 Q And you say you were here, you mean physically in this
24 building?

25 A Yes.

SYDOR-CROSS-HALEY

2186

1 Q Who were you with at that time?

2 A I was with them. I'm sorry, I forgot their names.

3 Q When you say "them," are you talking about both
4 prosecutors or one prosecutor at that time?

5 A One.

6 Q Of the two prosecutors, who were you with?

7 MS. KOMATIREDDY: He was with me.

8 A The lady. I'm sorry. I don't know her name.

9 Q That's all right.

10 Was anyone else present in this meeting?

11 A Yes. The other gentleman, Josh. He came to the airport
12 and brought me here.

13 Q Anyone else?

14 A Not in this room. Today, I looked over it again. It was
15 her and Matt.

16 Q When you say "Matt," do you mean Special Agent Matthew
17 Galimoto of the Federal Bureau of Investigations?

18 A Yes.

19 Q How long did that meeting take place?

20 THE COURT: Which one? The one this morning?

21 MR. HALEY: I apologize, Judge. Thank you.

22 Q I believe that you testified, sir, those documents, you
23 saw the documents a few days ago, is that correct?

24 A Yeah, I don't know the exact date. Do you know the date
25 I was here and then someone's mom had a stroke so I went back

SYDOR-CROSS-HALEY

2187

1 home.

2 Q My only question is, you don't have to be that specific.
3 But when you say a few days ago, do you mean approximately a
4 week ago, two weeks ago?

5 A Yes. I believe it was May 17th. I was here for May 17th
6 and left on the 20th.

7 Q All right. So on or about and between May 17th and
8 May 20th, I'm talking about the meeting where you testified
9 you saw certain documents for the first time. I'm talking
10 about that meeting, is that correct?

11 A Okay.

12 Q You believe that may have taken place between May 17th
13 and May 20th, is that correct?

14 A Yeah. I flew in on May 17th.

15 . So it would be May 18th I believe I met. I was
16 going to stick around, but then court was over that week. So
17 I went back home.

18 Q My question really, sir, just stay focused, the meeting,
19 once again, when you say you saw certain documents for the
20 first time, to the best of your memory, that occurred between
21 May 17th and May 20th, is that correct?

22 A Yes.

23 Q During that meeting one of the prosecutors was present,
24 is that correct?

25 A Yes.

SYDOR-CROSS-HALEY

2188

1 Q During that meeting one of the agents was present, is
2 that correct?

3 A Yes.

4 Q Staying focused on that meeting, okay. How long did that
5 meeting take place, approximately?

6 A I'm trying to stay focused. Three hours, four hours.

7 Q During the course of that three or four-hour meeting, I
8 take it questions were asked of you by the prosecutor and the
9 agent and you answered those questions to the best of your
10 ability, is that true?

11 A Yes.

12 Q As they asked you questions and as you answered the
13 questions, did you observe either the prosecutor or the agent,
14 let's say, taking notes of what you were telling them?

15 A Not a lot of notes. It was just a lot more talking about
16 it, showing me stuff. Yeah.

17 Q Not a lot of notes but as best you recall, some notes,
18 correct?

19 A There was a pen and paper there, yes.

20 Q Sir, do you recall if, whatever notes that were taken,
21 whether they were taken on a document about this size, which
22 is commonly know as a legal pad that I'm holding in my right
23 hand, eight and a half inches by 14, or were they taken on a
24 document I'm holding in my left hand about this size, commonly
25 known as a Post-it note, maybe four inches by two and a half

SYDOR-CROSS-HALEY

2189

1 inches? Do you recall which of the two documents were used to
2 take notes of the conversation you were having with the agents
3 during the three-hour meeting?

4 A A lot of notes were taken on -- maybe some on, I don't
5 know if you just said the exact size, I don't know, but the
6 big one. And some were on Post-it notes that was maybe just a
7 quick note that she would write down.

8 MR. HALEY: Your Honor, I would call for the
9 production of those notes.

10 THE WITNESS: I don't have them.

11 THE COURT: During the break we'll talk about them.

12 MR. HALEY: Very well.

13 Q Now, you testified on direct examination that
14 Document 2118 was one of the documents that you were shown by
15 the prosecutor and/or the agent during that meeting that took
16 place on or about between May 17th and May 20th, is that
17 correct?

18 A Yes.

19 Q We can agree, sir -- withdrawn.

20 In February of 2009 where did you reside?

21 A January and February, um...

22 Q Let me rephrase the question.

23 A Well, let me think about it.

24 Q Fair enough.

25 A That would be the house that I went back to from Dallas,

SYDOR-CROSS-HALEY

2190

1 in University Park.

2 Q Well, is it fair to say, sir, that on or about February
3 of 2009 you would receive mail at 36134 Haynie, H-A-Y-N-I-E,
4 Ave, Dallas, Texas 75205? Is that a fair statement?

5 A That was my residence there, yes.

6 Q Well, in or about that period of time, did you have any
7 awareness that there had been some defect with the United
8 States Postal Service where you were not receiving mail at
9 that address?

10 A I can't recall any information on the postal service.

11 Q We can agree, sir, that as relates to this particular
12 document, words like "Event of Default" are contained,
13 frankly, in the very first paragraph of that document,
14 correct?

15 A Right, if I would have seen that I would have remembered
16 seeing that.

17 Q Let's take a look at the document marked 2119. As
18 relates to document 2119, sir, is it correct that in March of
19 2009 you were residing at 3613 Haynie Avenue, Dallas, Texas
20 75205, is that true?

21 A Yes, sir.

22 Q And we can agree, sir, can we not, that this document
23 begins, "RE: Notice of Default and Intent to Sell
24 Collateral"? We can agree with that, can we not?

25 A Yes.

SYDOR-CROSS-HALEY

2191

1 Q Is it your testimony, sir, that for the first time, since
2 2009, you learned of the sale of your bond and collateral to
3 the line of credit when you met with the government back on
4 May 17th through May 20th of this year?

5 A Re-ask the question.

6 Q Sure. Is it your testimony, sir, that the first time you
7 learned that there had been a default and the sale of your
8 collateral as relates to the bond referenced to the line of
9 credit in the amount of \$850,000 as set forth on 2119, was
10 only a few days ago when you saw those documents as presented
11 to you by the prosecutor and the agent? Is that your
12 testimony?

13 A As I recall, yes. If I saw this letter and it said
14 Notice of Default and Intent to Sell Collateral, I would
15 remember that, yes.

16 Q Sir, we're talking about -- if I may. For the past six
17 years, throughout the pendency of this matter in terms of the
18 investigation, you had no knowledge of the default and the
19 sale of your bonds. Is that your testimony?

20 A That's what I'm saying, yes.

21 Q Well, prior to your May 20th -- May 17th through May 20th
22 meeting with the prosecutor and the agent, you were
23 interviewed by federal agents assigned to the investigation of
24 this matter, isn't that true?

25 A Yes.

SYDOR-CROSS-HALEY

2192

1 Q Is it not true, sir, that as far back, say, of July of
2 2012 you had an interview over the phone involving questions
3 asked of you by Special Agent Matt Galimoto and a person by the
4 name of Scott Romanowski? Isn't that true?

5 A Yes.

6 Q I take it, sir -- do you recall if, during the course of
7 that meeting back in July of 2012, you were told or there were
8 discussions about the fact that your bonds had been
9 collateralized for the default with reference to the line of
10 credit? That never came up?

11 A I'm sure it came up in the phone conversation, but I
12 didn't see this. I can't recall that conversation.

13 Q When it was brought up in that conversation, what did you
14 say? Did you say, This is the first time I'm hearing of it?
15 What did you say?

16 A I can't exactly remember what was said. I can't sit here
17 and remember that whole conversation.

18 (Matter continued on the next page.)
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Sydor - Cross/Haley

2193

1 Q Well, following that conversation, did or did you not
2 contact Phil Kenner to say Phil, in sum or substance, what
3 is that all about? Did that happen? Yes or no?

4 A I can't recall. It was part of the investigation and
5 left it in their hands to deal with.

6 I can't recall if I called Phil and asked him
7 what is going on or not.

8 Q Well, let's go to this document, Government's
9 Exhibit 6603, the e-mail introduced in evidence. Is says
10 sent via BlackBerry via AT&T. Yes, I totally understand
11 everything. Thx.

12 With reference to that particular document, that
13 was one of the documents you say that you saw for the
14 first time sometime between May 17th and May 20th of this
15 year, correct?

16 A Yes, the whole document. Like I said it is on my
17 BlackBerry and I probably read through the first couple
18 lines. It's small, probably didn't read through it all. .

19 Q When you say you probably didn't read through it all
20 --

21 A -- Say that because I would question a lot of of that
22 stuff, the Palms and all that stuff.

23 Q I understand, sir, your direct testimony, but when
24 you say you probably didn't read through it, at that point
25 in time to the best of your knowlege, was your BlackBerry

Sydor - Cross/Haley

2194

1 device functioning where you would have the ability to
2 read the text message that was sent to you and then
3 respond. That's just a question.

4 To your knowledge was the device working to that
5 extent? Yes or no?

6 A It was working, yes.

7 Q Sir, I'll ask you to take a look at a document marked
8 Kenner Exhibit 64.

9 As relates to what has been marked as Kenner
10 Exhibit 64, was that one of the documents that was shown
11 to you by the Government during the course of that meeting
12 between May 17th and May 20th of this year?

13 A Yes, I've seen this.

14 Q So you saw that document, I take it, before May 17th
15 and May 20th of this year; is that correct?

16 A I remember seeing this here, yes. I mean I don't
17 remember everything but --

18 Q Mr. Sydor, I don't expect you to remember everything.
19 We're talking about matters that go back six, seven,
20 eight, nine years, I'm not asking you, sir, to remember
21 everything.

22 You see typewritten Darryl Sydor?

23 A Yes.

24 Q Do you do you see what appears to be your signature
25 on the photocopy?

Sydor - Cross/Haley

2195

1 A That's my signature.

2 MR. HALEY: Your Honor, I offer this document as
3 Kenner Exhibit 64.

4 MS. KOMATIREDDY: No objection.

5 MR. LARUSSO: No objection, your Honor.

6 THE COURT: Kenner Exhibit 64 is admitted.

7 (Whereupon, Defendant's Exhibit 64 was received
8 in evidence.)

9 Q Only because I'm not adapt using the screen, I'll
10 read this document in evidence for purposes of the record.
11 It's very short.

12 November 3, 2014, Northern Trust Bank, 2398 East
13 Camelback Road, Suite 400, Phoenix, AZ, 85016.

14 Re: Darryl Sydor-LLC to Northern Trust. Please
15 allow Phil Kenner to access this outstanding line of
16 correct for direct deposit for Little Isle IV account at
17 Northern Trust Bank. He's authorized to sign for the
18 release of funds related to my line of credit.

19 Thank you for your assistance in this matter,
20 Darryl Sydor.

21 Q Now, sir, as relates to that document, isn't it true
22 that over the course of a period of time you would receive
23 other documents from Northern Trust and you would in turn
24 return other documents to Northern Trust bearing your
25 signature?

Sydor - Cross/Haley

2196

1 A Sorry, you are asking me? Can you repeat the
2 question?

3 Q Sir, isn't it true, sir, that in addition to Kenner
4 Exhibit 64, over a period of time, you would receive other
5 documents from Northern Trust Bank and you would in turn
6 sign and return those documents. Isn't that true?

7 A From Northern Trust?

8 Q Yes, sir.

9 A A lot would come from Phil via e-mail PDF, sign and
10 send back.

11 Q Not to parse out, sir, is it your testimony that a
12 lot of the documents would be sent by Phil Kenner through
13 e-mail with an instruction in sum and substance to sign
14 and return, correct?

15 A Yes.

16 Q I take it by a lot, not all. There were instances
17 where Northern Trust --

18 A -- Not directly.

19 MR. HALEY: I have to finish the question.

20 THE WITNESS: Yes.

21 MR. HALEY: Not to be rude to you, but the
22 reporter has to take the question and answer.

23 Q Sir, when you say a lot would be sent by Phil Kenner
24 with an e-mail signed and returned, I take it by that you
25 mean a lot were sent by Phil and some were sent directly

Sydor - Cross/Haley

2197

1 by Northern Trust, isn't that true?

2 Yes or no?

3 A I would say it mostly all came from Phil Kenner. I
4 didn't even know who was at Northern Trust contact-wise,
5 so if there was something that needed to be signed and
6 sent back, it would come from Phil Kenner.

7 Q Could you give us some estimation as to the amount of
8 documents that you received either through Phil -- and you
9 say almost all of these, that's fine. The documents that
10 you received through Phil Kenner as relates to your line
11 of credit at Northern Trust, he would forward those
12 documents to you via e-mail, correct?

13 A He would forward the signature page that I would need
14 to sign.

15 Q Mr. Sydor, as you sit here today, sir, under oath, is
16 it your testimony that you have a firm recollection that
17 all Phil Kenner ever sent you was a signature page, is
18 that your testimony?

19 A No, he sent me documents but a lot of the time it
20 would not be the whole full document.

21 Some of the time it would be can you review
22 this, sign it and send it back.

23 Q And when he, as you say, didn't send you the full
24 document, what, if any, communication would you initiate
25 with Phil Kenner under those circumstances?

Sydor - Cross/Haley

2198

1 A Can you repeat the question, please?

2 Q Sure.

3 When you say he would not on occasion or at
4 times send you the full document, what, if any,
5 communication would you initiate with Phil Kenner
6 following that occurrence?

7 A It would be over the phone or text message.

8 Q All right. So you get a document, as I understand it
9 by your testimony, it wouldn't be complete, so you would
10 then contact Phil. Is that your testimony?

11 A Are you asking if I asked him where is the rest of
12 the document?

13 Q I'm asking what conversation you had with Phil, sir.

14 A I can't remember every conversation I've had.

15 Q Let's stay focused on those instances where you did
16 not receive, as you say, the full document, it was only a
17 signature page and in turn you would contact Phil.

18 What would you say to him? Let's start with
19 what would you say to him?

20 A We probably would talk about the situation and I
21 don't know the exact conversation, we'd probably talk
22 about the situation and then he would send the signature
23 page and I would sign and send it back.

24 Q Well, Mr. Sydor, is it your recollection that you
25 would first receive only the signature page without the

Sydor - Cross/Haley

2199

1 rest of the document and then contact Phil, or before Phil
2 sent you the document containing only the signature page,
3 you'd have the conversation at that point?

4 A I can't recall the exact time frame of how it
5 happened. I can't sit here and give you an exact time
6 frame what was sent, when, and where.

7 Q Well, there's something called a master note. Do you
8 have any recollection of that being sent to you by Phil
9 Kenner in its complete form, not simply a signature page
10 but every part of the master note?

11 Do you remember that?

12 A I don't recall.

13 Q Well, Mr. Sydor, and again I know this goes back a
14 while, sir, but is that your to state over a period of
15 time where your line was credit was used as authorized by
16 Kenner Exhibit 64, Phil Kenner sent you more than just a
17 signature page, a signature page, a signature page, a
18 signature page?

19 Isn't that a fact?

20 MS. KOMATIREDDY: Objection to form.

21 THE COURT: Sustained as to form.

22 A That's a possibility.

23 THE COURT: No.

24 THE WITNESS: Sorry.

25 THE COURT: I sustained the question.

Sydor - Cross/Haley

2200

1 Rephrase it.

2 Q Sir, you testified on direct examination that your
3 account at Schwab as it relates to the bonds, that was
4 important to you in terms of your investment portfolio, is
5 that true?

6 A Yes.

7 Q So it would be fair to state if you saw something as
8 relates to your bond account or you acquired information
9 that let's say your line of credit would be collateralized
10 by your bond account, you would want to pay attention to
11 that kind of circumstance, would you not?

12 A Yes.

13 Q Could you give us some idea as to the conversations
14 and communications you had with Phil, either over the
15 phone or by way of e-mail exchanges or by way of let's say
16 letters written for the period of time that your line of
17 credit was in effect.

18 Give us some idea? More than one conversation,
19 more than 10? Just some idea?

20 A I can't recall. I mean he was my financial advisor
21 and I trusted him with what he did. I can't recall how
22 many conversations we had specifically on that.

23 Q But he would communicate with you, yes, sir? Is that
24 correct?

25 A Through a conversation we'd talk about a whole bunch

Sydor - Cross/Haley

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1 of different things, whether it was family, whether it was
2 investments, whether it was hockey.

3 Q I'm really talking about would he communicate with
4 you with reference to your investments, sir.

5 I understand you would talk about other things
6 but my question is pretty focused. Would he communicate
7 with you when you had questions about your investments.

8 Yes or no?

9 A He would communicate with me about my investments,
10 yes.

11 Q As a matter of fact you testified on direct that as
12 relates to investments generally, you and he would discuss
13 an investment that might be risky as opposed to an
14 investment that did not involve a level of risk, true?

15 A Yes.

16 Q Did you understand, sir, that the Hawaii project
17 involved an element of risk?

18 A Uhm, I think any land deal is an investment of risk,
19 but from what I was told, it was a very nice piece of
20 property -- I hadn't been to that property -- and it was
21 going to be good. So ...

22 Q Do you have any reason to believe as you sit here
23 today, that it was not a nice piece of property? I'll
24 rephrase the question?

25 Do you have any reason to believe as you sit

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1 here today that Phil Kenner misled you when he said to you
2 that is in substance a nice piece of property?

3 MS. KOMATIREDDY: Objection to form.

4 THE COURT: No, I'll let him answer that. You
5 can answer it.

6 THE WITNESS: Can you ask it again.

7 Q When you and Phil discussed the Hawaii project which
8 involved investing in the purchase and development of
9 property in the state of Hawaii, did you have any reason
10 to believe that he misled you when he said in sum and
11 substance, this is a nice piece of property in Hawaii?

12 A No, I believed him.

13 Q By the way, did you ever ask to see, let's say, a
14 map, an aerial map of the properties that were being
15 purchased in Hawaii with reference to Little Isle IV?

16 A I don't recall seeing a map. I recall getting some
17 information in like a binder form or so in Little Isle IV.

18 Q Let's talk about the binder you got from Phil Kenner
19 in Little Isle IV.

20 By a binder you mean more than just a signature
21 page? You are talking about, I'll use the word "stack of
22 documents."

23 A It's a binder by about an inch and a half, I would
24 say it is (indicating).

25 Q And when you say binder, was it round clips so you

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1 could look at the documents? How was it bound, sir, if
2 you recall?

3 A Yeah, I believe it is like a school binder, like
4 round clips.

5 Q All right.

6 If you recall could you describe the substance
7 of the documents contained in that binder?

8 A I can't. I can't recall. I could sit here and say I
9 know everything but I don't.

10 Q You did say on direct you were aware that the Hawaii
11 project was going to be represented by a company called
12 Little Isle IV, true?

13 A True.

14 Q And did or did you not have an understanding that
15 Little Isle IV was something known as a Limited Liability
16 Company, an LLC?

17 A I believe so, yes.

18 Q And to your knowledge, who was the managing member of
19 the LLC? Who was responsible for organizing and pursuing
20 the investment?

21 A I can't recall whose name was on it. I know like
22 Phil came to me for an investment, that's all.

23 Q Well, sir, did you have an understanding that Phil
24 Kenner was the managing member of Little Isle IV LLC?

25 A Uhm, I'm not sure. I know he was my go-to

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1 in-between. I don't know who was the managing partner.

2 Q Well, do you know, sir, if within that binder of
3 documents, you received the four page operating agreement
4 for Little Isle IV?

5 A Are you asking me if I know if it is in there?

6 Q Yes.

7 A I can't say I know what is in there, I don't. It
8 might be but I haven't seen it for awhile.

9 Q By the way, where is that binder today?

10 A I believe it's in my storage in my house in Minnesota
11 with some other binders, the Diamonte binders and things
12 like that.

13 Q Were you ever asked by the prosecutor or the agents
14 assigned to this investigation to produce that binder for
15 them?

16 A No.

17 Q Did you ever offer to produce that binder as it
18 relates to Little Isle IV to the prosecuting agents in
19 this case?

20 A No.

21 Q I take it, sir, they demonstrated no interest in your
22 binder, isn't that true?

23 MS. KOMATIREDDY: Objection.

24 MR. HALEY: I'll withdraw the question.

25 THE COURT: Why don't we take the morning break.

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1 MR. HALEY: Thank you, sir.

2 (Whereupon, at this time the jury exits the
3 courtroom.)

4 THE COURT: Do you want that binder or not?

5 MR. HALEY: May I speak with my client? There
6 was another evidentiary issue.

7 THE COURT: But if you want the binder I'll ask
8 him about it.

9 THE COURT: May I continue, Judge. First of
10 all, Judge, thank you.

11 MR. HALEY: Judge, as relates -- sorry, Judge,
12 my mind wandered, as relates to the Government's notes --

13 THE COURT: I want to know about the binder
14 first before we take the break.

15 MR. HALEY: Your Honor, it's not a request at
16 this point in time as relates to the binder.

17 THE COURT: Okay. Mr. Sydor, you may take a
18 ten-minute break. Thanks.

19 (Witness exits.)

20 MR. MISKIEWICZ: Your Honor, for the record,
21 there are numerous copies of these binders, essentially
22 like a prospectus offered, they've gotten numerous copies.
23 This is a pure grandstanding waste of time that Mr. Haley
24 went through this, particularly the last question, so I
25 guess the Government had no interest in obtaining this.

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1 That is completely false and a complete waste of time and
2 we're behind as it is.

3 MR. HALEY: May I address that comment, Judge?

4 THE COURT: The last question was obviously
5 argumentative, but I don't think it is a waste of time in
6 questioning him regarding the binder, but the Government
7 can put in what it is but he's free to question him what
8 he received from Mr. Kenner, but please don't ask the last
9 argumentative question to make the point.

10 MR. HALEY: And, Judge, sometimes my enthusiasm
11 gets ahead of me and that's is not an excuse and your
12 Honor is correct. I do want to state for the record this
13 is not grandstanding. I do not believe when the
14 Government received a prospectus and that's the binder
15 that's not to my knowledge what is or is not contained in
16 that document. So from my perspective, Judge, it is far
17 from a waste of time and I do not based upon what I've
18 seen in excess of a million documents provided to me
19 through Rule 16 discovery seen that information part of
20 the Rule 16 disclosure. So that is my position on that.

21 THE COURT: Were there no statements during that
22 meeting? What about the notes?

23 MS. KOMATIREDDY: I have my direct witness
24 outside. I'm happy to give it to the Court for a review.
25 That is a consolidation of my notes. It had typewritten

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1 and handwritten notes on the top.

2 THE COURT: Other notes or your name.

3 MS. KOMATIREDDY: I wasn't memorializing the
4 defendant's statement. I've already had questions to ask
5 him. My normal practice in general given the obvious --

6 THE COURT: Do you have them right now?

7 MS. KOMATIREDDY: I can give it to you right
8 now.

9 THE COURT: Give it to him.

10 And did the agent take notes?

11 MS. KOMATIREDDY: No, sir.

12 THE COURT: All right. Let's take a break.

13 MR. HALEY: Thank you, sir.

14 (Whereupon, a recess was taken.)

15 THE COURT: Ready, Mr. Haley.

16 MR. MISKIEWICZ: Your Honor, I would ask
17 reconsideration to your Honor to disclose Ms. Komatireddy's
18 notes. I have a copy I would be happy to give to the
19 Court. I understand when an AUSA writes notes, basically
20 statements of a witness, they are not necessarily
21 protected, but this material if you just looked at it I
22 think you would agree it is nothing but privileged work
23 product, requests nothing but her thought processes and
24 the information she intends to view it.

25 THE COURT: If the United States of America

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1 takes a contemporaneous statement over a witness whether
2 in the form of a question or in the form of an answer they
3 should be produced. And other things that -- just because
4 in the form of a question doesn't mean that doesn't mean
5 that the witness spoke to her. In an abundance of caution
6 that should be turn over. If she had typewritten things
7 before she met with him and you want to redact those out
8 that's fine, but better make sure this witness hangs
9 around so if there are additional questions based on her
10 notes that he's still here. It's up to you.

11 MR. MISKIEWICZ: I think we're -- if we would
12 have an opportunity, yes, there are many typewritten
13 portions, handwritten portions on this outline and we'd
14 ask for an opportunity to redact anything that is
15 privileged.

16 THE COURT: You'll have an opportunity during
17 the lunch break.

18 MR. HALEY: I assure the Government I'll look at
19 it immediately. It may be there is nothing of great
20 substance or impact. I may not ask a question about that
21 but I assure the Court I think everyone is looking to get
22 this witness off the stand and move on to the next
23 witness.

24 THE COURT: All right. Let's bring the jury in
25 and bring in the witness.

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1 MR. HALEY: Judge, I apologize for the printer.
2 I hope it is not distracting. Occasionally testimony is
3 adduced that we don't anticipate so we have to pull a
4 document off the printer.

5 THE COURT: That's fine.

6 MR. HALEY: Thank you, sir.

7 (Witness resumes.)

8 (Whereupon, the jury at this time enters the
9 courtroom.)

10 THE COURT: Please be seated.

11 Mr. Haley, go ahead.

12 MR. HALEY: Thank you, sir.

13 Q Mr. Sydor, I'm going to show you a document that has
14 been admitted in evidence as Government's Exhibit 2169,
15 and I believe you testified on direct that this is a
16 document you did see before your meeting with the
17 prosecutor and the agents sometime between May 17th and
18 May 20th of this year.

19 A I can't recall that I said that.

20 Q All right. Well, it's in evidence, so we can agree
21 it says account statement, is that true?

22 A Yes.

23 Q What was your address in or about March of 2009 --
24 let me rephrase the question, sir.

25 In or about March of 2009, at that point in

Sydor - Cross/Haley

2210

1 time, did you have an address where you would receive
2 correspondence through the United States mail at 110
3 Millview, Pittsburgh, Pennsylvania, 15238?

4 A This is our house in Pittsburgh when I played there.

5 Q But that's an accurate address; is that correct?

6 A That's an accurate address, but in March of '09 I'm
7 not there.

8 Q Where are you in March of '09?

9 A I don't exactly know the date but this is when I got
10 traded back to Dallas, Texas.

11 Q So you were in Pittsburgh before you got traded back
12 to Dallas?

13 A Yes.

14 Q I see.

15 And you then moved from Pittsburgh I take it
16 into the Dallas address; is that correct?

17 A Yes.

18 Q As relates to that move, to your knowledge, was there
19 a forwarding address wherein mail that might be sent to a
20 prior address would then be forwarded to your new address?

21 A Yes, my wife and kids -- when you get traded you get
22 traded one day you are gone that day so they stayed there
23 for a bit and then came to Dallas.

24 I'm assuming that, yeah, my wife would forward
25 to the Post Office for mail or whatever, moving, whatever

Sydor - Cross/Haley

2211

1 that is. When you move you do something with the post
2 office. Forward mail.

3 Q And that's a fair assumption, sir. You got moved a
4 lot so you want to make sure when you move from one
5 location to another the mail would end up being brought to
6 your attention by way of forwarding address. Is that a
7 fair statement?

8 A Yes.

9 Q We can agree, can we not, as far as this particular
10 document is concerned, and the jury's recollection will
11 prevail, sir, it's not for me to testify what you said on
12 direct. But as far as this document is concerned, if you
13 received this prior to May of this year, page 6 of this
14 document, clearly reads in bold type, pledged account
15 information, isn't that true?

16 A Yes.

17 Q There were instances, sir, where you were contacted
18 by a representative from Northern Trust with reference to
19 your line of credit, true?

20 A I don't believe being contacted by Ms. Catie, the
21 administrator, and Mathew R. Miller, portfolio manager.

22 Q Sir that's not my question.

23 Is it not true that there were times when
24 someone, whether it is those two individuals or someone
25 else, contacted you from Northern Trust with reference to

Sydor - Cross/Haley

2212

1 your account, correct?

2 A I don't recall, no.

3 Q Kindly take a look at a document marked Kenner
4 Exhibit 65, and don't read it out loud. Just read the
5 writing on this document to yourself.

6 Sir, does that refresh your recollection that on
7 or about April 1, 2009, Aaron from Northern Trust
8 contacted you and suggested a conference call take place
9 between you, Phil Kenner and Aaron?

10 A Yes. It says that, but I don't recall that. I don't
11 remember it.

12 Q Okay.

13 Sir, I'll ask you to take a look at a document
14 marked Kenner Exhibit 66. It's a photocopy, but take a
15 look at the document and with particular reference to what
16 appears under at least this typewritten name.

17 Sir, do you see what appears to be your
18 signature on that document?

19 A I see it.

20 MR. HALEY: Thank you, Mr. Sydor.

21 THE WITNESS: Do you want me to --

22 MR. HALEY: No.

23 Q Mr. Sydor, take a look at a document marked Kenner
24 Exhibit 67. Sir, you are entitled to look at the entire
25 document but it does contain several pages. I'll draw

Sydor - Cross/Haley

2213

1 your attention to the last page of the document.

2 In those photocopies, sir, do you see what
3 appears to be your signature?

4 A I see what appears to be my signature.

5 Q Sir, I will show you another document. And again you
6 are entitled to look at the entire document, but I'll show
7 you -- I'll draw your attention to the last page of that
8 document.

9 THE COURT: What number is that, Mr. Haley?

10 MR. HALEY: Sorry, Judge. 68.

11 Q And in that photocopy do you see a signature that
12 appears to be your signature?

13 A I see a signature.

14 Q Well, as relates --

15 A I see the signature, it appears to be a signature.

16 Q Your signature, correct?

17 A It appears to be my signature.

18 Q All right.

19 Q Sir, I'm going to ask you to look at that document
20 marked Kenner Exhibit 69. You are entitled to look at the
21 entire document but I'll draw your attention to the last
22 page of that document, again it is a photocopy, but do you
23 see a signature above these typed words?

24 A Yes.

25 Q Does that appear to be your signature, sir?

Sydor - Cross/Haley

2214

1 A It appears to be my signature.

2 Q Now, at any point in time did you or someone acting
3 on your behalf ever request all of the documents from
4 Northern Trust as relates to your line of credit or bonds?

5 A Have I ever requested it?

6 Q Yes.

7 A No.

8 Q Sir, I'll ask you to look at Kenner 70.

9 If you may, sir, let's just, if you don't mind,
10 sir, so you have a sense what is on the page. Look at
11 page 1 and go to page 2, page 3, page 4, page 5, page 6,
12 and then there's a page 7.

13 Though a photocopy, sir, do you recognize your
14 signature on the document?

15 A It appears to be a signature on this document and
16 this printing is not my printing.

17 Q Well, whose printing is this here, if you know?

18 A My printing is not that neat.

19 Q So you guess it is not your printing?

20 A I don't believe so.

21 Q Whose printing is it?

22 A I don't know.

23 Q As relates to the signature line, does that appear to
24 be your signature? Yes or no?

25 A It appears to be my signature.

Sydor - Cross/Haley

2215

1 Q Well, in or about July of 2006, do you have a
2 recollection -- well, withdrawn, sir.

3 As relates to this particular document, in July
4 of 2006, do you have a recollection of receiving a letter
5 addressed to the members of Little Isle IV, LLC? Yes or
6 no?

7 A I don't recall.

8 Q When you say you don't recall, I take it you mean you
9 may or may not have received that, true?

10 A Yeah, true. I don't recall.

11 Q Okay.

12 Q Sir, would you kindly take a look what has been
13 marked Kenner Exhibit 71. You are entitled to look at the
14 entire document. I draw your attention at least to the
15 heading, and specific reference to what would be page 9 of
16 the document?

17 As relates to that exhibit, and although a
18 photocopy, do you see what appears to be your signature on
19 that document?

20 A That's not my signature.

21 Q Well, as relates to this particular document, in or
22 about April of 2006, do you have a recollection of
23 receiving a document that pertains to Little Isle IV LLC,
24 yes or no?

25 A I don't recall. (Continued.)

Sydor - Cross/Mr. Hailey

2216

1 CROSS-EXAMINATION (Continuing)

2 BY MR. HALEY:

3 Q You understood, did you not, that by committing your
4 line of credit with reference to Little Isle IV you would
5 receive an ownership or percentage interest in Hawaii
6 project, true?

7 A I believe I invested 500,000 into Hawaii, and the
8 line of credit, 100,000 line of credit was supposedly to
9 be with Lehman Brothers and Company or something and get
10 me that back.

11 Q I'll ask the question again, sir.

12 My question is, Did you understand that by
13 investing through either the line of credit or by way of
14 let's say a specific cash contribution in the Hawaii
15 project, you would be receiving a percentage ownership in
16 interest that project.

17 You understood that, at the time?

18 A Yes, yes.

19 Q As it relates to Eufora, isn't it true that you had
20 an understanding that by investing in Eufora, you would be
21 receiving a percentage of an ownership interest in that
22 company, true?

23 A Yes.

24 Q The conversation that you had with Phil Kenner the
25 day that he spoke to you about Eufora, how long ago did

Sydor - Cross/Mr. Hailey

2217

1 that occur?

2 A Years ago.

3 Q Well could you give us the year to the best of your
4 recollection?

5 A I think conversations about Eufora were around
6 '03-'04, something like that.

7 Q 2003, 2004?

8 A I believe so.

9 Q Over a decade ago, correct?

10 A It would be that.

11 Q Did you take written notes of the conversation that
12 you had with Phil in terms of what he said to you
13 regarding Eufora?

14 A No. I remember the first conversation, one of the
15 first conversations or conversation we were on the golf
16 course. I didn't write it down.

17 Q But I take it from that answer, sir, it was more than
18 one conversation about Eufora, true?

19 A I was asked -- we had conversations, a few different
20 conversations, a few different topics.

21 Q My question is this. The conversation that you had
22 with Phil Kenner back in 2003-2004, where based upon that
23 conversation you made a decision to commit your money to
24 Eufora. I'm talking about that conversation.

25 Did that conversation occur on the golf course

Sydor - Cross/Mr. Hailey

2218

1 or did it occur some other place?

2 A I can't recall the exact spot where I committed to
3 it.

4 Q But it's fair to say that as it relates to that
5 conversation, it wasn't recorded.

6 That's true, correct?

7 A Right.

8 Q And you weren't taking notes in connection with what
9 Phil was saying to you, correct?

10 A Correct.

11 Q But it's crystal clear that you had an understanding
12 as a result of that conversation, that in return for you
13 allowing Phil pursuant to the power of attorney you gave
14 him, to use your money with reference to Eufora, you were
15 going to get an ownership interest.

16 That was your understanding, correct?

17 A Correct.

18 Q Beyond that understanding, do you have a specific
19 recollection, as you sit here today, about anything else
20 Phil told you about Eufora?

21 A I can't sit here and say that I remember, no.

22 Q Do you know as you sit here today, whether Tommy
23 Constantine had and continues to have an ownership
24 interest in Eufora?

25 A I believe so, yes.

Sydor - Cross/Mr. Haley

2219

1 Q Do you have an understanding, sir, as you sit here
2 today, as a result of the -- let me withdraw that.

3 When you were shown the bank records that said
4 Constantine Management Group by the government on direct,
5 we can agree, sir, can we not, that Constantine Management
6 Group, Inc, at least Tommy Constantine shared some
7 similarity at least by way of his last name.

8 A That's right.

9 Q Now you testified on direct that your first financial
10 advisor was Scott Bye?

11 A Yes.

12 Q And you stayed with him for about three years, true?

13 A Yes.

14 Q And during that period of time he was recommending
15 what I'll call conservative investments, stocks and bonds.

16 Is that true?

17 A Yes, stocks and bonds, and life insurance, for me and
18 my wife.

19 Q And what time frame, what years are we speaking of?

20 A I think that would have been --

21 Q Well let me try.

22 A Yes, '93/'94, something like that.

23 Q Do you recall during that period of time how the
24 market was doing in connection with stocks and bonds? Was
25 it doing well or were you getting average returns or

Sydor - Cross/Mr. Hailey

2220

1 anything?

2 A I don't recall what the market was doing at that
3 time.

4 Q And then you decided, you testified on direct that
5 through acquaintances to leave Scott Bye and go to Phil
6 Kenner.

7 Is that true?

8 A Yes.

9 Q Why did you leave Scott Bye?

10 A I'm not sure. It was really, he was really good.
11 Just talking to Phil -- my wife wanted it. You know, it
12 just seemed communication was a lot easier for me to
13 understand, you know, investments and all that kind of
14 stuff. It wasn't that -- I don't know.

15 Q In other words, sir, Phil Kenner took the time and
16 effort when he met with you not to speak in terms of
17 financial terms that you couldn't understand, but at least
18 to reduce it to a point where you had a sense and
19 understanding as to your investments.

20 Isn't that true?

21 A Yes.

22 Q And then there comes a point in time where, I believe
23 you testified on direct, you moved from Scott Bye to Phil
24 Kenner, true?

25 A True.

Sydor - Cross/Mr. Hailey

2221

1 Q And at the point in time you moved to Phil Kenner,
2 Phil was at that point in time recommending at least the
3 same types of investments, at least initially, that you
4 had with Mr. Bye.

5 Isn't that true?

6 A Yes. I didn't have a lot with Scott Bye, as I said
7 life insurance, stuff like that. I remember -- yeah, it
8 was similar stuff.

9 Q And he was recommending, at least when you first met
10 Phil, conserve-type investments. In other words, he
11 wasn't immediately throwing you into high risk
12 investments, was he, when you first met Phil?

13 A No, not at first, no.

14 Q Do you know how the market, the stocks and bonds
15 market was doing during the period of time when Phil first
16 started recommending these conservative investments to
17 you? Was it doing well? Was it doing average? Was it
18 doing poorly?

19 A I don't recall that.

20 Q I understand, sir, that you testified on direct that
21 you trusted Phil. And when he made a recommendation as it
22 relates to other investments that were riskier, I know you
23 told us on direct and even cross-examination, that you
24 would discuss those risk factors with Phil.

25 Is that true?

Sydor - Cross/Mr. Hailey

2222

1 A Yes. I would trust him, trust him like a friend,
2 yes.

3 Q And when he described to you the risk factors, would
4 he also describe it from your perspective in a language
5 and terms that you could understand?

6 A Yes. He wouldn't specifically say, this is high
7 risk. But in a land deal and other stuff, those are
8 riskier. They're not near Coca Cola and all, you know,
9 the stocks and bonds?

10 Q But with the risk would come with it, should it
11 succeed, a great return on your investment.

12 You understood that, did you not?

13 A Yes.

14 Q And I don't mean to belabor the point. But we're
15 talking about the investments in real estate in Hawaii,
16 true?

17 A True.

18 Q Have you been to Hawaii, sir?

19 A Been to Hawaii with my parents in 1970, 1980 I think.

20 Q When?

21 A Late 1980 we went to Hawaii. And also on my
22 honeymoon I went there.

23 Q And what did you think of the place when you went
24 there on those two occasions?

25 A It's a long way to go.

Sydor - Cross/Mr. Hailey

2223

1 Q But it's just downright beautiful, isn't it?

2 A It's a nice place, yes.

3 Q By the way, when you first started using Phil as your
4 business manager, financial advisor, Phil presented you
5 with a contract. Even though you were friendly with Phil,
6 he presented you with a contract known as a standard
7 advisors agreement by which you then paid his quarterly
8 fee.

9 Do you recall that?

10 A Yes, I did, yes.

11 Q At that point in time did you have the opportunity to
12 read the contract that Phil presented to you and have an
13 opportunity to have him answer any questions you might
14 have about that contract?

15 A Yeah. I believe we started out when Phil was in
16 Boston at Asante. And then I'm not sure, after Asante
17 then State Street Advisors. I remember in Dallas, Texas,
18 in Houston when we signed it.

19 Q You remember, sir, whether or not that contract
20 became what we know as an arbitration clause, meaning that
21 should there ever been a dispute between you and Phil
22 Kenner you could elect to go to arbitration rather than
23 pursue what could be a very lengthy and expensive civil
24 lawsuit?

25 Do you remember that being part of the Kenner

Sydor - Cross/Mr. Hailey

2224

1 advisor's agreement?

2 A I don't remember going through it all, no.

3 Q But was there a reference there, sir, where you
4 elected to take advantage of that arbitration clause
5 because of some dispute you had with Phil, yes or no?

6 A I didn't know --, sir, no.

7 Q By the way, other than Phil being your financial
8 advisor, over the years you have had access, yourself, to
9 obtain legal advice. Is that true?

10 A I have had -- I guess so, yeah.

11 Q Well, you have purchased homes, correct?

12 A Yes.

13 Q And during the course of those purchases you would
14 have at least interaction with an attorney, true?

15 A With an attorney? You know, other than the title and
16 stuff like that, I'm not sure if that was an he.

17 Q Well, I guess sir -- I'll make it simple.

18 From the point in time Phil Kenner became your
19 business manager/financial advisor, up to today, have you
20 ever retained the services of an attorney for any purpose?

21 A Personally, myself, I haven't retained one. But I
22 mean for the situation of the deposition I had to do and
23 stuff like that, that was through Phil's attorney. I had
24 to seek out to look for a lawyer.

25 Q Well, as relates, let's say to any of your

Sydor - Cross/Mr. Hailey

2225

1 involvement with the National Hockey League, was there
2 ever an instance where, either directly or through your
3 agent, an attorney was involved, if you recall?

4 A Not that I recall.

5 Q Well, we certainly can agree should you so choose you
6 know how to get in touch with a lawyer, correct, wherever
7 you are?

8 A Yeah.

9 Q When you were asked on direct specifically a question
10 offering a yes or no answer, did you authorize any of your
11 money to go to Tommy Constantine, your answer was, no.

12 Do you recall that?

13 A Directly to Tommy Constantine, yes.

14 Q Well, you told us a moment ago that you have an
15 awareness that Tommy Constantine has and still does have
16 an ownership interest in Eufora, true?

17 A I believe so, yes. I met Tommy once.

18 Q You said a moment ago, sir, that after the initial
19 decision to invest in Eufora there were occasions when you
20 and Phil discussed your Eufora investment. I think you
21 said one time was on the golf course.

22 A We had conversations. I might have brought that up.
23 I might have brought a different investment up.

24 Q And was Phil always -- when you spoke with Phil about
25 these investments you would ask him a question and he

Sydor - Cross/Mr. Haley

2226

1 would give you an answer.

2 Is that true?

3 A Yes.

4 Q Was there ever an instance where he said, I'm not
5 going to answer your question? Did he ever say something
6 like that?

7 A No.

8 Q You did have an understanding, as you told us on
9 direct, that the GFS Fund would be used against lawyers's
10 fees. And you used that, quote, lawyers's fees, correct?

11 A Yes, used for lawyers's fees -- situation.

12 Q Do you have any idea as you sit here today, as to the
13 nature of the lawsuit involving Phil Kenner and Kristie
14 Myrick?

15 A Do I know what happened there?

16 Q Well, do you have any idea, sir, as to the nature of
17 the lawsuit; whether he sued her or whether she sued him,
18 and the reasons for that lawsuit? Do you have any
19 understanding of that?

20 MS. KOMATIREDDY: Objection, your Honor.

21 THE COURT: Overruled. You can answer that.

22 A I believe that Kristie was suing Phil over getting
23 fired, over getting let go.

24 BY MR. HALEY:

25 Q Who, to the best of your knowledge told you that,

Sydor - Cross/Mr. Haley

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1 that it was Kristie suing Phil over her getting fired
2 rather than Phil Kenner suing her for purposes of
3 absconding with records related to Hawaii land
4 development, things of that nature? Who told you?

5 MS. KOMATIREDDY: Objection, your Honor.

6 THE COURT: Sustained as to form.

7 BY MR. HALEY:

8 Q Who, to the best of your memory, who told you that
9 the lawsuit was commenced by Phil Kenner against Kristie
10 Myrick over her firing?

11 MS. KOMATIREDDY: Objection, your Honor.

12 THE COURT: Sustained.

13 MR. HALEY: I apologize.

14 BY MR. HALEY:

15 Q Well, who was the person who told you about the
16 Kristie - Kenner lawsuit?

17 A Both Phil and she. She mentioned it that he sued
18 her.

19 Q How often did you communicate with Kristie Myrick via
20 text?

21 A Not too often. When she worked there, she was the
22 one, I think I would ask her, you know, where is he, or
23 whatever was going on. Since all that happened I have
24 never spoken to her.

25 Q When you say when she worked there.

Sydor - Cross/Mr. Hailey

2228

1 Kristie Myrick worked for Phil Kenner as an
2 employee of Standard Advisors, Inc. Isn't that true?

3 A I believe so.

4 Q Kristie Myrick, if you know, sir, maintained in part
5 Standard Advisors books and records, including the books
6 and records as related to the Hawaii land development.
7 Isn't that true?

8 A You're asking do I know if she has them?

9 Q No. Did you have an understanding that Kristie
10 Myrick was an employee of Phil Kenner?

11 A I believe she was his secretary, helped Phil Kenner.

12 Q And the communications that you had with Kristie
13 Myrick, did it concern things like your line of credit
14 and/or the use of your money for the Hawaii land deal,
15 things of that nature?

16 MS. KOMATIREDDY: Objection, your Honor.

17 THE COURT: Overruled.

18 You can answer that.

19 A Ask that again, sir?

20 BY MR. HALEY:

21 Q Your communication with Kristie Myrick, do you
22 recall, did it concern matters like the use of your line
23 of credit and/or let's say your investment in Hawaii,
24 things of that nature?

25 A I don't understand the question. She wasn't -- I'm

Sydor - Cross/Mr. Haley

2229

1 sure she knew about these investments, but I didn't -- she
2 didn't have authority to do anything with it that I would
3 ask her.

4 Q No. I would like you to understand the question.

5 The content of the communications you had with
6 Kristie Myrick, to the best of your knowledge did they in
7 some sense involve your investment in the Hawaii project?

8 A I don't believe so, no.

9 Q Well, do you have a recollection of what you talked
10 about with her?

11 A Like I said --

12 MS. KOMATIREDDY: Objection.

13 THE COURT: Sustained.

14 BY MR. HALEY:

15 Q I'm going to ask you to take a look at a document
16 marked Kenner Exhibit 72. And again, you're entitled to
17 look at the entire document. But your attention at least
18 is drawn to the cover page or the first page.

19 Does that document, sir, have some meaning to
20 you?

21 A No.

22 Q Well, do you recall filing a claim in the United
23 States Bankruptcy Court, the District of Arizona, where
24 you were named as the plaintiff and Tommy Constantine was
25 named as the respondent?

Sydor - Cross/Mr. Haley

2230

1 MR. LaRUSSO: Your Honor, can we have a sidebar.

2 THE COURT: Yes.

3 (Continued on the following page.

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Sydor - Cross/Mr. Haley

2231

1 (The following occurred at sidebar.)

2 MR. LaRUSSO: I object to any question regarding
3 this bankruptcy proceeding. I believe, my understanding
4 is that Mr. Sydor -- well, if there is allegations here
5 that Mr. Constantine may have committed bankruptcy fraud,
6 I want to stay away from any allegations that might draw
7 out any information regarding the bankruptcy and
8 possibility that my client was involved in Bankruptcy
9 Court. So I'm objecting to anything involving Bankruptcy
10 Court.

11 MR. HALEY: Tommy Constantine clearly, through
12 the efforts of my client sold portions of his ownership
13 interest in Eufora to various hockey players over the
14 years. That was the circumstance under which Phil was
15 making representations to the hockey player investors that
16 they were told for their contributions an ownership
17 interest in Eufora. And what was occurring was Tommy
18 Constantine was indeed diminishing his ownership interest
19 by selling his stock and ownership interest in Eufora

20 Tommy Constantine years later when he was in
21 financial straits files a petition for bankruptcy. In
22 that petition he denies -- and I don't whether it is true
23 or not from my perspective -- that he had an ownership
24 interest in Eufora. Phil Kenner assisted Darryl Sydor and
25 others in bringing this claim in the bankruptcy

Sydor - Cross/Mr. Hailey

2232

1 proceeding. Judge, I'll show you the particular point --
2 which each of Phil Kenners investors, clients was detailed
3 for the bankruptcy judge in order that, and for --
4 obligations to his client, there should be a claim in the
5 petition proceeding that his clients be made whole. That
6 doesn't speak of a conspiracy between Phil Kenner and
7 Tommy Constantine.

8 As I said before, judge, I don't represent Tommy
9 Constantine. I represent Phil Kenner. My only objective
10 here is not to introduce this document into evidence, but
11 to establish to the jury, should he be called, that he
12 filed this petition against Tommy Constantine in the
13 Bankruptcy Court with the assistance of Phil Kenner. And
14 indeed, your Honor, that is something I mentioned in my
15 opening statement.

16 THE COURT: This is a much more limited offer.
17 He wants to say, show that he believes Mr. Kenner assisted
18 Mr. Sydor in trying to say what interest he had in Eufora
19 against Mr. Constantine's bankruptcy petition. That
20 doesn't suggest any fraud.

21 MR. LaRUSSO: If it is at least that limited.
22 I'm just concerned about the other part that he was
23 alluding to.

24 THE COURT: I'm precluding any effort to try to
25 prove some type of fraud in connection with the

Sydor - Cross/Mr. Haley

2233

1 bankruptcy. Okay?

2 MS. KOMATIREDDY: He is reading into the record
3 and asking something, asking questions, does it refresh
4 your recollection. He is reading from a document --

5 THE COURT: No, no.

6 MR. LaRUSSO: You can see my concern. The
7 document talks about Mr. Constantine representing falsely.
8 I want him to stay away from that.

9 MR. HALEY: Your Honor, despite my enthusiasm at
10 times, I know what to do and what not to do.

11 MR. LaRUSSO: Thank you very much.

12 (Continued on the following page.
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Sydor - Cross/Mr. Hailey

2234

1 (The following occurred in open court.)

2 BY MR. HALEY:

3 Q Mr. Sydor, taking a look at what has been marked
4 Kenner Exhibit 72.

5 Do you recall an instance, sir, where Phil
6 Kenner assisted you in filing a document in connection
7 with a bankruptcy proceeding in order for you to preserve
8 your interest in Eufora?

9 Do you recall that?

10 A No.

11 MR. HALEY: I just have a few more questions.

12 BY MR. HALEY:

13 Q Do you know who Sergei Gonchar is, yes or no?

14 A Yes.

15 Q And who is he?

16 A A hockey player that I played against in the National
17 Hockey League.

18 Q Do you know who Mattias Nordstrom is?

19 A Yes.

20 Q And who is he?

21 A A hockey player I played against.

22 Q Do you know who Michael Peca is?

23 A Yes.

24 Q And who is he?

25 A An NHL player I played against.

Sydor - Cross/Mr. Hailey

2235

1 Q Do you know who Tyson Nash is?

2 A Yes.

3 Q And who is he?

4 A He is a really good friend and an NHL player I played
5 against in junior hockey.

6 Q Do you know who Greg deVries is?

7 A Yes. I played against him in the National Hockey
8 League.

9 Q Do you know who William Ranford is?

10 A Yes. I played against him in National Hockey League.

11 Q Do you know who Glen Murray is?

12 A Yes. I played against him in the National Hockey
13 League.

14 Q And finally, do you know who Vitali Yachmenev is?

15 A Yes.

16 Q And do you have an understanding, sir, that in
17 addition to yourself, each one of those hockey players had
18 contributed money as an investment in Eufora?

19 A Yeah, yes. I didn't know exactly who everybody, but
20 yes.

21 MR. HALEY: May I have a quick moment, judge?

22 BY MR. HALEY:

23 Q Sir, in connection with the Myrick litigation we
24 spoke of before involving Phil Kenner and Kristie Myrick;
25 do you recall being deposed as relates to that lawsuit,

Sydor - Cross/Mr. Hailey

2236

1 where questions were asked of you by the attorney for
2 Ms. Myrick, and the attorneys for Phil Kenner?

3 A I don't recall that.

4 Q Would you take a look at a document marked Kenner
5 Exhibit 73?

6 A Yes, I do.

7 Q Does that refresh your recollection as to whether or
8 not you were deposed in connection with the lawsuit
9 involving Phil Kenner and Ms. Myrick?

10 A Yes, I guess I was. I guess I didn't recall, but
11 this is what it was.

12 Q And does that document refresh your recollection -- I
13 don't mean to interrupt you.

14 Please, you're entitled to look at the entire
15 document if you wish to do so. I don't want to interrupt.

16 A Okay.

17 Q Sir, does that document refresh your recollection
18 that the lawsuit involving Phil Kenner and Kristie Myrick
19 was commenced by Phil Kenner against Kristie Myrick, in
20 other words he was the plaintiff, he sued her, not the
21 other way around?

22 A Yes.

23 Q It does refresh your recollection. Is that correct?

24 A Yes, it says here. I can't remember this whole case.
25 I can't remember what questions were asked in the

Sydor - Cross/Mr. Hailey

2237

1 deposition.

2 Q Do you have a recollection, sir that you retained an
3 attorney to represent you, and only you, for purposes of
4 that deposition?

5 A I personally did not go out and find somebody, no, I
6 don't think so. I don't recall.

7 Q Well, do you know, or do you recall if Global
8 Settlement Fund refused to pay for your attorney in
9 connection with that deposition?

10 A Can you ask the question against?

11 Q Do you know if Global Settlement funds were used to
12 pay for an attorney representing you during the course of
13 that deposition?

14 A Not -- I can't recall, no.

15 Q Does the law firm Gruber, Hurst, Johansen and Hail,
16 LLP, meaning anything to you?

17 A Can you repeat that? Gruber?

18 Q I'll repeat that.

19 Does the string of names mean anything to you,
20 Gruber, Hurst, Johansen, and Hail, LLP, mean anything to
21 you?

22 A I believe I -- it rings a bell.

23 Q And finally, sir, following the Lehman closing, is it
24 not true that you did receive funds as relates to --
25 withdrawn.

Sydor - Cross/Mr. LaRusso

2238

1 Following Lehman closing, you testified to on
2 direct you were aware there was going to be a Lehman
3 closing as relates to the Hawaii land development, true?

4 A I believe, yes.

5 Q And following that closing, did you receive monies
6 either directly or indirectly from Phil Kenner, yes or no?

7 A I don't recall.

8 Q Well, do you know if on or about August 25, 2006 you
9 received the sum of \$383,914.40?

10 MS. KOMATIREDDY: Objection.

11 THE COURT: Overruled. If he knows.

12 A I don't recall, no.

13 BY MR. HALEY:

14 Q Do you recall, sir, receiving the sum of \$42,500 some
15 odd change, either directly or indirectly from Phil Kenner
16 following the Lehman closing?

17 A I don't recall.

18 Q Mr. Sydor, thank you for your testimony.

19 THE COURT: Mr. LaRusso?

20 MR. LaRUSSO: Thank you, your Honor.

21

22 CROSS-EXAMINATION

23 BY MR. LaRUSSO:

24 Q Good afternoon, Mr. Sydor. My name is Robert
25 LaRusso. I represent Mr. Constantine.

Sydor - Cross/Mr. LaRusso

2239

1 I believe you testified a little while ago that
2 you met Mr. Constantine on one occasion in Phoenix, I
3 believe that was your testimony a few minutes ago?

4 A Yes. I met him one time with Tyson Nash. We walked
5 through the building and we met for lunch at a sandwich
6 shop, I believe.

7 Q Would you be able to identify Mr. Constantine if you
8 saw him again?

9 A Right there.

10 MR. HALEY: He indicated my client, your Honor.

11 THE COURT: Yes.

12 BY MR. LaRUSSO:

13 Q Mr. Sydor, I'm going to ask you a few questions about
14 the Myrick lawsuit.

15 You testified on direct that you did not
16 authorize any of your Global Settlement Fund contributions
17 to be used towards the Myrick lawsuit.

18 Is that correct?

19 A I believe so, yes.

20 Q You believe so?

21 A Can you ask the question again, sir?

22 Q Sure.

23 When you were testifying on direct and the
24 government was asking you questions, you were asked
25 whether or not any of your Global Settlement Fund monies

Sydor - Cross/Mr. LaRusso

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1 that you contributed were to be used for the Myrick
2 lawsuit. And your answer was, no, correct?

3 A Correct.

4 Q And I believe you also testified that you would not
5 have made that contribution if you knew you were going to
6 be paying for the Myrick lawsuit or a personal lawsuit.

7 Is that correct?

8 A Correct. I was under assumption it was for the
9 Mexican situation.

10 Q Now you testified a few moment ago that you now
11 recall actually appearing for a deposition in the Myrick
12 lawsuit.

13 Is that correct?

14 A Yes. I didn't recall at first, but I do remember
15 doing this, the deposition. It was in the Los Angeles
16 area. I remember, I actually got a speeding ticket on the
17 way back from there.

18 Q And you recall communicating with Mr. Constantine in
19 regards to your appearance at the Myrick litigation for
20 the purposes of being deposed. Do you have any
21 recollection of communicating with Mr. Constantine either
22 by Blackberry, e-mail or telephone call?

23 A I don't recall, no.

24 Q Do you have any recollection of being, using the
25 words, upset you were being asked to attend a deposition

Sydor - Cross/Mr. LaRusso

2241

1 down in Los Angeles in regard to the that lawsuit?

2 A Yes. Just, yeah. I was.

3 Q Do you recall the date of that deposition?

4 A It says on here, Tuesday July 7, 2009.

5 Q I'm going to show you what is marked for
6 identification as C-139. Take a look at this, please.
7 And you can start on the second page and work your way
8 forward. I just want to make sure you have had an
9 opportunity to look at that.

10 A Yeah, I remember some of it.

11 Q And directing your attention to the other portions
12 so that my next question will have some meaning. Okay?

13 Does that refresh your recollection, do you
14 remember communicating with Mr. Constantine via your
15 Blackberry to his e-mail regarding the Kenner/Myrick --
16 I'll do it more directly.

17 Does this say, this is a communication between
18 you and Mr. Constantine on June 16, 2009 regarding the
19 Kenner/Myrick suit and your appearance for the deposition?

20 A Yes.

21 MR. LaRUSSO: And your Honor, may I ask this be
22 received at this time?

23 MS. KOMATIREDDY: No objection.

24 THE COURT: No objection?

25 MR. HALEY: No, sir.

Sydor - Cross/Mr. LaRusso

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1 THE COURT: C-139 is admitted.

2 (Defense Exhibit C-139 in evidence.)

3 BY MR. LaRUSSO:

4 Q I'm not going to read all of this to the jury, but I
5 would just like to display -- C-139, and what we were
6 referring to was the date June 16, 2009. And it is you
7 corresponding with Mr. Constantine.

8 Is that correct, from your Blackberry?

9 A Yes.

10 Q And at this point you're telling Mr. Constantine that
11 you have an anniversary, and you would look at other
12 dates. But I am in and out for the -- expletive -- and
13 only one hour.

14 Do you see that?

15 A Yes. I'm not even sure what that was, for why I said
16 that.

17 Q You had a family affair and you weren't available at
18 that time and were you discussing with Mr. Constantine a
19 better date for your deposition.

20 Is that correct?

21 A Yes.

22 Q Now at this point, June 2009, you had made your
23 contribution to the settlement find.

24 Is that correct, back in May of 2009 about a
25 month before?

Sydor - Cross/Mr. LaRusso

2243

1 A Yes.

2 Q And were you aware that Mr. Constantine was
3 participating in overseeing some of the funds that were
4 being contributed to the Global Settlement Fund at this
5 point?

6 A I believe so, yes.

7 Q Just a few questions.

8 You know you attended the deposition. Do you
9 remember ever discussing with Mr. Constantine that it was
10 going to be the]Global Settlement Fund that was going to
11 pay for your expenses in connection with your appearance
12 at the Kenner/Myrick lawsuit, particularly your
13 deposition?

14 A I don't believe so, no.

15 Q I'm going to show you what has been marked for
16 identification as C-138. And again, start on the second
17 page and read forward, and examine all of it before I ask
18 the next series of questions.

19 Direct ing your attention up to the top. Is
20 this an e-mail communication in part between you and
21 Mr. Tommy Constantine on June 10, 2009 in regards to your
22 appearance in the Myrick lawsuit, particularly your
23 deposition?

24 A Yes, it has that on there.

25 Q And it contains information that you were forwarding

Sydor - Cross/Mr. LaRusso

2244

1 to him regarding your communication with others via your
2 Blackberry.

3 Is that right?

4 A Yes.

5 MR. LaRUSSO: Your Honor, he would ask C-138 be
6 received at this time.

7 MR. HALEY: No objection.

8 MR. MISKIEWICZ: No objection.

9 THE COURT: C-138 admitted.

10 (Defense Exhibit C-138 in evidence.)

11 MR. LaRUSSO: With your permission, your Honor,
12 I would like to just read a portion of that C-138 dated
13 June 10, 2009.

14 BY MR. LaRUSSO:

15 Q That's your information at the top, that header?

16 Is that correct, Mr. Sydor?

17 A Yes.

18 Q And this is to Tommy, re Eufora?

19 A Yes.

20 Q And you're sending it via your Blackberry. And there
21 are correspondences that you attach here. I would like to
22 just direct your attention to the second page for a
23 moment.

24 If you recall, Mr. Haley referred to a law firm
25 by name of Gruber, Hurst, Johansen and Hail. Do you see

Sydor - Cross/Mr. LaRusso

2245

1 that?

2 A Yes.

3 Q Does that refresh your recollection that they were
4 retained to represent your interest in this lawsuit?

5 A I believe so, yes.

6 Q Particularly Mr. Mark L Johansen.

7 Is that right?

8 A Yes.

9 Q And the first e-mail on this chain is from
10 Mr. Johansen to you.

11 Is that correct?

12 A Yes.

13 Q And it says, Darryl, I hope you and your family are
14 doing well and are enjoying the summer. I wanted to let
15 you know that your deposition will not take place on June
16 12th as we previously scheduled. Apparently counsel for
17 Myrick still wants to take your deposition and we are
18 looking at June 19, 24, 25, or 26. Do any of those dates
19 work for you. Regards, Mark.

20 And Mark is your attorney, Mr. Johansen?

21 A I guess so, yes.

22 Q Well, the next e-mail is your reply from you to
23 Mr. Johansen.

24 Is that correct?

25 A Yes.

Sydor - Cross/Mr. LaRusso

2246

1 Q I want to make sure that you see it.

2 And your portion of the email says: Hey, Mark,
3 thank you very much for your help on this. However, you
4 should of been notified by either attorney Paul Augustine
5 and/or Ron Richards that they are handling the case going
6 forward.

7 Who is Paul Augustine?

8 A I guess it is Ron Richard's help. I don't know. I
9 think this is through, I think through Phil. This is who
10 we had, Ron Richards as a lawyer out of LA. Also helped
11 me with my deposition for this years back.

12 Q And that is the Ron Richards that your money was sent
13 to via wire transfer, correct, your Globe Settlement
14 money?

15 A That is where I was told to send it to, yes.

16 Q And the next sentence, I apologize for not being
17 notified yet. Paul and Ron actually have been retained by
18 the entire group of us -- in rackets Kenner clients -- and
19 are handling the Global Settlement plan as well as filing
20 certain class action suits against certain parties.

21 And that kind of spells out accurately that
22 Mr. Richards was the person who was going to be handling
23 the Global Settlement Fund on behalf of you and the other
24 hockey players.

25 Is that right?

Sydor - Cross/Mr. LaRusso

2247

1 A I believe so, yes.

2 Q Now this you, this is a e-mail from you to your
3 lawyer, correct?

4 A Well this is, yeah, this is going to Mark Johansen
5 telling him that I no longer need him.

6 Q Now after you mentioned Global Settlement Fund, the
7 next sentence says, They will be covering me in the
8 deposition in the Myrick case if it even takes place at
9 all.

10 Do you see that?

11 A Yes.

12 Q Is it fair to say at this point, you're saying that
13 the monies that Mr. Ron Richard has custody of regarding
14 the Global Settlement fund will be taking care of the cost
15 of your deposition at this point?

16 MS. KOMATIREDDY: Objection.

17 THE COURT: Overruled.

18 BY MR. LaRUSSO:

19 Q Is that correct?

20 A Can you ask the question again, please, sir.

21 Q At this point in your communication to Mr. Johansen,
22 you're saying, They will be covering me in the deposition
23 in the Myrick case if it even takes place at all. They,
24 being Mr. Ron Richardson and Paul Augustine.

25 Is that correct?

Sydor - Cross/Mr. LaRusso

2248

1 A Yes.

2 Q And when you say covering you, covering the cost of
3 your appearance and other expenses in regards to your
4 deposition.

5 Is that correct?

6 A Well, they didn't cover me -- I mean, I think what I
7 meant by that was that they're going to be the lawyers now
8 with me at the deposition. I paid for my own flight down.

9 Q Somebody had to pay for those expenses, right?

10 A Yes.

11 Q And you're telling inquire lawyer that Mr. Ron
12 Richards will be covering those expenses.

13 Is that what your saying at this point,
14 Mr. Sydor?

15 A I guess that is what it's saying, yes.

16 Q Let me just finish reading it.

17 Myrick's attorney was notified by Paul -- in
18 brackets, last week, end brackets -- that I could not
19 attend the first scheduled depo date. That is probably
20 why they have responded to you with the new dates. In any
21 case, I will make sure that you are physically notified by
22 Paul or Ron immediately. And I thank you again for all
23 your help. Finally, please advise me if there are any
24 additional final billings since my last payment.

25 So you're making payments to this lawyer,

Sydor - Cross/Mr. LaRusso

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1 correct?

2 A Yes.

3 Q And you're telling him that payments that are being
4 made by you are going to be covered by the Global
5 Settlement Fund?

6 A Payments by me are going to be covered by the Global
7 Settlement Fund?

8 Q Yes. Is that what you're telling Mr. Johansen at
9 this point?

10 A I don't believe so. I paid out of pocket for that.

11 Q I understand that. But when you paid out of pocket,
12 didn't you make a request to have those expenses paid for
13 by the Global Settlement Fund?

14 A I can't recall.

15 Q This doesn't refresh your recollection?

16 A No. I can't recall asking for money from the Global
17 Settlement.

18 Q Did you communicate with Mr. Constantine at all
19 regarding any expenses or fees in connection with the
20 Global Settlement Fund?

21 A I can't recall.

22 Q Let me show what has been marked for identification
23 as C-144.

24 Do you recognize this as an email from you to
25 Mr. Constantine around the same time frame, May 20, 2009,

Sydor - Cross/Mr. LaRusso

2250

1 talking to him in regards to an \$8,000 expense?

2 A Yes. It's from Tommy asking me for \$8,000.

3 Q In regards to?

4 A I guess the bill from the law firm.

5 Q In regards to the deposition in the Myrick case.

6 Is that correct, to the best of your
7 recollection?

8 A I guess. I don't know.

9 MR. LaRUSSO: Your Honor, I ask that C-144 be
10 received.

11 MS. KOMATIREDDY: Objection, foundation.

12 THE COURT: Overruled.

13 Any objection to it.

14 MR. HALEY: I'm going to say, no, sir.

15 THE COURT: C-144 admitted.

16 (Defense Exhibit C-144 in evidence.)

17 THE COURT: Ladies and gentlemen, it's time for
18 the lunch break.

19 MR. LaRUSSO: I'm actually finished with my
20 reports, judge, if you want to --

21 THE COURT: So we'll take a lunch break. And
22 we'll meet again at 2:00

23 (A luncheon recess was taken at 1:00 p.m.)

24 (Continued on the following page.)

25

Sydor - Cross/LaRusso

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1 A F T E R N O O N S E S S I O N

2

3 THE COURT: All be seated. Ready?

4 MR. LARUSSO: Yes, your Honor.

5 THE COURT: How much longer do you think you
6 have, Mr. LaRusso?

7 MR. LARUSSO: I want to say an hour, Judge.

8 THE COURT: An hour?

9 MR. LARUSSO: I threw out two yellow pieces of
10 paper already. It may be shorter, Judge.

11 THE COURT: Okay.

12 (Whereupon, the jury at this time enters the
13 courtroom.)

14 THE COURT: Be seated.

15 Go ahead, Mr. LaRusso.

16 MR. LARUSSO: Thank you, your Honor.

17 CROSS-EXAMINATION

18 BY MR. LARUSSO:

19 Q Mr. Sydor, I'm going to come up here and just ask you
20 a few questions so we can move along as quickly as we can.
21 Take a look what has been mark for Identification as
22 C 141, and I ask you do you recognize this as an e-mail
23 from your lawyer, Mr. Johansen in regard to your
24 deposition you are forwarding to Mr. Constantine on
25 September 8, 2009, in regards to the last outstanding bill

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1 for his services?

2 A Yes, I see it.

3 MR. LARUSSO: Your Honor, I ask C 141 be
4 received.

5 THE COURT: Any objection?

6 MS. KOMATIREDDY: No objection.

7 THE COURT: Any objection.

8 MR. LARUSSO: No, sir.

9 THE COURT: C 141 received into evidence.

10 (Whereupon, Defendant's Exhibit C 141 was
11 received in evidence.)

12 Q Very briefly in regards to the September 8, 2009,
13 e-mail, that's your e-mail address, is that correct,
14 Mr. Sydor?

15 A Yes.

16 Q To Mr. Constantine, Tommy at Eufora, and you are
17 responding at this point: Just got this. Just got this.
18 And you are forwarding the following message that appears
19 below. It is from Mark to you, Darryl. I hope you and
20 your family are enjoying the summer. Since our work is
21 done on this case, could I please get you to take care of
22 the outstanding attorney fee balance of \$1,697. Please
23 call if you have any questions or if I can be of any
24 additional assistance.

25 Thanks, Mark.

Sydor - Cross/LaRusso

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1 You e-mailed to Mr. Constantine this message and
2 said got this. It's in reference to if you look the
3 header, Myrick/Kenner lawsuit?

4 A Yes.

5 Q Does this refresh your recollection that you are
6 asking Mr. Constantine to take care of this bill in
7 regards to the expenses incurred in the Myrick lawsuit?

8 A I don't remember this conversation, but that's what
9 it does reflect.

10 Q Now, the Government Exhibit 6603, that's the e-mail
11 you talked about where you were responding to Mr. Kenner's
12 e-mail of May 17, 2009, regarding the uses of the Global
13 Settlement Fund.

14 Do you recall that testimony?

15 A Yes.

16 Q And to be fair, you were telling us that you only
17 recall the initial portion of it, you did not as you
18 recall read the entire e-mail message. Is that right? Is
19 that your testimony?

20 A Yes.

21 Q However, you did respond, yes, I totally understand
22 everything. Thanks, Darryl.

23 Is that correct?

24 A Yes.

25 Q And that would be on May 18, 2009, right? Do you

Sydor - Cross/LaRusso

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1 agree with me?

2 A Yes.

3 Q Did you visit with Mr. Constantine either on that day
4 or shortly thereafter at the Eufora offices?

5 A I can't exactly remember the exact date that I met.
6 I just know that we went through the offices, he showed me
7 the hangar, and then we went to lunch. I don't remember
8 the exact date.

9 Q Do you have a recollection of any further
10 conversation with Mr. Constantine on that occasion?

11 A Well, we went to lunch. I can't remember exactly
12 what we talked about.

13 Q Let me show you what has been marked for
14 identification as C 125. Do you recall responding on
15 May 18th, the same day of your e-mail that we just looked
16 at to Mr. Constantine regarding an upcoming meeting the
17 following day on May 19th?

18 A I guess that's the time that I was in Phoenix and met
19 him.

20 Q That's your e-mail address to Mr. Constantine in
21 response to his; is that correct? Actually it's your
22 BlackBerry.

23 A I guess it is what you set up for your BlackBerry for
24 mail.

25 MR. LARUSSO: I ask C 125 be received at this

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1 time.

2 MS. KOMATIREDDY: No objection.

3 MR. HALEY: No objection.

4 THE COURT: C 125 is admitted.

5 (Whereupon, Defendant's Exhibit C 125 was
6 received in evidence.)

7 Q Mr. Sydor, I'd ask you to take a look at the date of
8 this e-mail, May 18, 2009. That's the same date of the
9 e-mail response you gave to Mr. Kenner, is that right, in
10 regards to the authorization use of Global Settlement Fund
11 money?

12 A I guess so, yes.

13 Q Well, just so we're sure, your response is this is
14 the 6603 exhibit. Do you see that, Mr. Sydor?

15 A Yeah.

16 Q I want to make sure I get it correct. And your
17 response to Mr. Kenner is on May 18, 2009?

18 A Yes.

19 Q And then the e-mail talking about setting up a
20 meeting with Mr. Constantine is on the same day of that
21 e-mail you responded to, May 18, 2009; is that right?

22 A Yes, earlier in the day.

23 Q And the address that Mr. Constantine is forwarding to
24 you, that is the address of Eufora; is that right?

25 A I don't know exactly the address of Eufora.

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1 Q Take a look at your reply: Be there by 10:30 a.m.
2 tomorrow. Do you see that?

3 A Yes.

4 Q Does it refresh your recollection that you had a
5 meeting with Mr. Constantine on May 19th at Eufora, 2009?

6 A I believe that's the day I met him, yeah.

7 Q Now, did you have any discussion with him, does this
8 help refresh your recollection, that on May 19th you
9 discussed with Mr. Constantine the purposes of the Global
10 Settlement Fund?

11 A I can't recall the conversation exactly what we
12 discussed.

13 Q So if I listed a number of topics that you may have
14 had discussed, you would not be able to recall one way or
15 the other such as acquiring assets, obtaining interest in
16 hangars or airplanes, you have no recollection of that
17 taking place or you have no recollection whether it did
18 take place?

19 A Either way, yeah, I don't exactly know the specifics
20 of the conversation.

21 Q But would you agree with me having looked at these
22 two e-mails the possibility is you more than likely
23 discussed the Global Settlement Fund with Mr. Tommy
24 Constantine?

25 MS. KOMATIREDDY: Objection to form.

Sydor - Cross/LaRusso

2257

1 THE COURT: Sustained.

2 A I --

3 THE COURT: Sustained.

4 Q After May 18, 2009, we'll use that date if I could,
5 would you agree with me that you continued your
6 communication with Mr. Constantine either directly by
7 telephone or by the use of e-mails?

8 A I believe we had contact, yeah.

9 Q In particular, do you remember after May 18, 2009,
10 participating in conference calls with all or most of the
11 other contributors to the Global Settlement Fund that were
12 arranged by Mr. Constantine?

13 A Yeah, I remember one specifically about the Global
14 Settlement Fund.

15 Q And did you call into that?

16 A Yes, I was sitting in a parking lot of a Best Buy.

17 Q Do you have a recollection of more than one
18 conference call being arranged as opposed to recalling
19 only one that you participated in?

20 A I think it might have been one or two. I can't
21 recall if there is more.

22 Q Do you have any recollection of the particular nature
23 of the discussions that took place during those conference
24 calls?

25 A The one I was sitting in Best Buy in my car

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2258

1 listening, we were talking about the Global Settlement
2 Fund and then for the situation in Mexico at the time.

3 Q Do you have a recollection of any other topics being
4 discussed in the conference call? You do remember?

5 A I don't remember, no.

6 Q Let me just ask you to look at what has been in
7 evidence and I'll not review all of these. This is C 33
8 in evidence, and at the header, do you see Syd@ as your
9 e-mail address?

10 A Yes.

11 Q Do you have a recollection of receiving an invitation
12 by Mr. Constantine on June 10, 2009, to participate in a
13 conference call?

14 A I don't recall.

15 Q Let me show you what has been received in evidence as
16 C 34, this is an e-mail that is in evidence June 25, 2009.

17 This is C 34, June 25, 2009, and your e-mail is
18 part of the group e-mail; is that correct (indicating)?

19 A Yes.

20 Q Do you recall receiving an invitation by
21 Mr. Constantine on this date to participate in conference
22 call number 2?

23 A I don't remember, no. I don't recall.

24 Q C 35 in evidence. This is conference call number 3,
25 August 19, 2009. Your e-mail address is part of the

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1 group; is that correct?

2 A Yes.

3 Q Do you recall receiving an invitation on August 19,
4 2009, to participate?

5 A I don't recall.

6 Q Let me ask you, do you remember, and this is C 32,
7 Mr. Sydor, June 10, 2009, e-mail, a conference call. Do
8 you know all of the individuals listed on the lower
9 left-hand side.

10 Do you recognize some of those names, if not all
11 of them?

12 A Yes.

13 Q Those are many of the hockey players that invested as
14 you recall in the Global Settlement Fund?

15 A Yes.

16 Q Many of these, if not all, you either know personally
17 or played against?

18 A Yes.

19 Q Do you remember receiving this e-mail from
20 Mr. Constantine?

21 A I don't recall seeing it, no.

22 Q Do you remember any conference call that you
23 participated in, and I'll quote, if I could. This is in
24 evidence.

25 There is a legal aspect and a media aspect which

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1 we all need to be very aware of and approve before we can
2 execute.

3 Do you have any recollection after reading that
4 to you and looking at that that one topic that may have
5 been the subject of the conference call was not only the
6 legal aspect but a media aspect as well?

7 A I don't recall.

8 Q I will show you what has been marked for
9 identification as 32 A, and using what I've left on the
10 screen which is C 32, would you agree with me this is your
11 response to Mr. Constantine's invitation to participate in
12 the conference call?

13 A Yes.

14 Q And that would be dated the same date, June 10, 2009;
15 is that right?

16 A Yes.

17 MR. LARUSSO: Your Honor, may I ask -- and it is
18 marked C 32 A, be received in evidence?

19 MS. KOMATIREDDY: No objection.

20 MR. HALEY: May I see that, Mr. LaRusso.

21 MR. LARUSSO: I'm sorry.

22 MR. HALEY: No objection.

23 THE COURT: C 32 A is admitted.

24 (Whereupon, Defendant's Exhibit C 32 A was
25 received in evidence.)

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1 Q This is the e-mail we just reviewed, the lower
2 portion from Mr. Constantine to you regarding a conference
3 call and the upper portion which is dated the same day, is
4 your response to Mr. Constantine; is that correct?

5 A That's what it shows, yes.

6 Q It says Sunday for Syd?

7 A That's what it says.

8 Q Do you have a recollection actually participating in
9 this conference that occurred shortly after June 2009?

10 A I mean I just don't recall.

11 Q But you do agree when you received an invitation from
12 Mr. Constantine, this refreshes your recollection that you
13 responded to him at least to your availability?

14 A I guess, yes.

15 Q By the way, do you recall in any of the either
16 e-mails that you received from Mr. Constantine or any of
17 the conference calls that you recall participating in,
18 discussing the status of the lawsuit or suits that were
19 being brought?

20 A Ask that again.

21 Q I'm sorry.

22 A Ask that again.

23 Q In either of the e-mails from Mr. Constantine or in
24 the conference calls you recall participating in, do you
25 remember Mr. Constantine updating you or giving you

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1 information regarding the lawsuits which were the subject
2 of the Global Settlement Fund?

3 I'll try and move it along and I apologize to
4 you.

5 Showing you what has been marked for
6 identification as C 126. Just take a look at it. You can
7 look at the headers.

8 I'll try and ask it in a general way. The
9 exhibit will speak for itself.

10 Do you remember responding to Mr. Constantine in
11 regards to information he was providing you regarding an
12 update on the lawsuits that were taking place?

13 A Yes, I guess.

14 Q Well, do you recognize --

15 A That's my e-mail.

16 Q -- To Mr. Constantine which precedes information that
17 he had forwarded to you; is that right?

18 A Yes.

19 Q On October 19, 2009; is that correct?

20 A Yes.

21 Q You can look at the second page --

22 MR. LARUSSO: Your Honor, I ask that C 126 be
23 received.

24 MS. KOMATIREDDY: May I look at the document?

25 No objection.

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1 MR. HALEY: No objection.

2 THE COURT: C 126 is admitted.

3 (Whereupon, Defendant's Exhibit C 126 was
4 received in evidence.)

5 MR. LARUSSO: I would just publish the header if
6 I could. This is C 126 and it is from Mr. Sydor to
7 Mr. Constantine on October 19, 2009. Thank you.

8 Q Do you remember, and again I know it has been a long
9 time, back when you sent your acknowledgment to Mr. Kenner
10 on May 18, 2009, receiving an e-mail from Mr. Constantine
11 discussing acquiring assets with Global Settlement Fund's
12 money?

13 A I don't recall.

14 Q Particularly amongst a number of topics, acquiring an
15 airplane known as the Falcon 10?

16 A I know it was talked about in discussion.

17 Q What I'll do, I'll show you what has been marked for
18 identification as C 127. Do you recognize this as an
19 e-mail dated May 18, 2009, from Mr. Constantine to you,
20 discussing acquisition aspects of the Global Settlement
21 Fund, and please take your time.

22 Mr. Sydor, so the record accurately reflects
23 what happened, I went up and I placed another exhibit
24 before you marked separately as C 127 A for
25 identification, and ask you if there was an attachment to

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1 the e-mail I'm asking you to examine, please look at C 127

2 A, that on May 18, 2009, you received an e-mail from

3 Mr. Constantine discussing the acquisition of assets by

4 the Global Settlement Fund money?

5 A Yeah, it was sent to my Blackberry.

6 Q That was operating around May 18, 2009, your

7 Blackberry?

8 A Yes.

9 MR. LARUSSO: I'll ask 127 be received in
10 evidence.

11 THE COURT: 127 A or just 127?

12 MR. LARUSSO: Actually both, 127 and 127 A.

13 VOIR DIRE EXAMINATION

14 BY MS. KOMATIREDDY:

15 Q You testified that that is your e-mail in the "to"
16 line?

17 A The one that is set up with BlackBerry.

18 Q Do you actually remember checking that e-mail
19 address?

20 A I don't even remember checking my blackberry.net --

21 MS. KOMATIREDDY: I'm sorry, please finish your
22 answer.

23 Q -- I never use blackberry.net. I never checked that
24 specifically. Just my e-mail.

25 Q As you sit here today, as you look at this, do you

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1 independently as you sit here today remember ever
2 receiving this e-mail from Tommy Constantine?

3 A I don't remember the specifics of this, no.

4 MS. KOMATIREDDY: We object.

5 THE COURT: Why don't you approach.

6 (Whereupon, at this time the following took
7 place at the sidebar.)

8 (Continued.)

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1 THE COURT: It's still admissible to the extent
2 Mr. Constantine was sending to him. It is still
3 admissible to Mr. Constantine's state of mind. So if you
4 want an instruction.

5 MR. MISKIEWICZ: Your Honor, I'm taking this out
6 of turn. Our position on this, there is no way of telling
7 this is even authentic, we've never seen this before, we
8 have no independent indicia. There is no -- this has
9 never been turned over in discovery and we have a million
10 pages of discovery, never seen it before. This entire
11 thing could have been made up yesterday. Under
12 authenticity grounds, if anything else, we object.

13 MR. LARUSSO: He's identified it not as
14 positively as I like. This is from the e-mail server, the
15 Government can authenticate this. There is no evidence
16 this is in any way tampered with.

17 MS. KOMATIREDDY: I'm not sure what gmail server
18 this is from. This is not Mr. Sydor's gmail. This is not
19 something that we had access to.

20 THE COURT: How could they get access to this?
21 How could they check it?

22 MR. LARUSSO: It's on the gmail server.

23 THE COURT: For anybody to look at.

24 MR. LARUSSO: You can't doctor with the gmail
25 server.

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1 MS. KOMATIREDDY: Actually you can. I've seen
2 other fraudulent e-mails. This is coming from the
3 Constantine account. This is not that we have an access
4 to, so when we ask for e-mails, this is not an account
5 that we can have access to.

6 THE COURT: I want to think about this one. He
7 obviously can't authenticate it any further but I want to
8 think about it.

9 MR. LARUSSO: So there is a complete record, the
10 document attached to it, and again to show authenticity,
11 he says his investments in Eufora is only 250. Our
12 records he actually had \$400,000 along with these other
13 individuals, so his interest was in AZ Partners which
14 converts in AZ Partners' interest in Eufora. That's what
15 the document show. There is no evidence to doctor this.
16 We wouldn't have put 400,000 into investments at this
17 point. She said 250.

18 THE COURT: Why don't you keep going.

19 MR. LARUSSO: Okay.

20 (End of sidebar conference.)

21 (Continued.)

22

23

24

25

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1 (Open court.)

2 MR. LARUSSO: Your Honor, I'll display to the
3 jury what is already in evidence as C 31.

4 Q Mr. Sydor, this is an e-mail that was received in
5 evidence, the subject matter is AZ Falcon Partners LLC
6 operating agreements dated July 27, 2009. It's an e-mail
7 from Mr. Constantine to a group of individuals.

8 Do you see your e-mail address here
9 (indicating).

10 A Yeah, it's on there a couple of times.

11 Q I found it once. No, it's here as well. I guess
12 they made sure you got it, is that right?

13 A (No response.)

14 Q Mr. Sydor, I'll read portions of this and ask you
15 questions relative to what is in this e-mail in evidence,
16 and ask you whether or not if it refreshes your
17 recollection receiving information from Mr. Constantine on
18 the date I just mentioned.

19 To all: As you may recall through our
20 discussions, one of the issues that was recently resolved
21 as part of our Global Settlement effort, was Diamonte Air,
22 which involved several airplanes and a lawsuit that was
23 filed by the bank against Phil and those of you who
24 invested in the company.

25 Do you recall receiving an e-mail discussing the

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1 Global Settlement Fund's efforts in regards to one of
2 Jowdy's companies called Diamonte Air?

3 A I don't recall. I mean I recall Diamonte Air. I
4 don't recall this e-mail.

5 Q Do you know the name Diamonte Air?

6 A I don't think so, no.

7 Q Do you remember investing 250,000 in it?

8 A Well, I remember investing in Diamonte, the golf
9 course.

10 Q When it says who invested in the company, were you
11 part of that group? Do you know?

12 A In Diamonte Air?

13 Q Yes.

14 A I mean I flew private a lot and actually never flew
15 once on this airplane.

16 MR. LARUSSO: Mr. Sydor, I didn't catch your
17 answer, I'm sorry, when you looked away.

18 A I don't recall, no.

19 Q Well, let me just finish reading the paragraph to see
20 if it refreshes your recollection. This lawsuit has been
21 dropped. We have reacquired the airplane, refurbished it
22 to its highest standards and all is well with respect to
23 this entity. It is the same solution we hoped to provide
24 with all the other investments made with Jowdy.

25 Do you have a recollection that at this point

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1 Mr. Constantine is telling you that they reacquired from
2 Mr. Jowdy an airplane which has been known as discussed as
3 the Falcon 10?

4 A I think I remember something about that. I don't
5 exactly know the specifics.

6 Q I'll drop down a little bit and continue the
7 discussion with the airplane to see if it refreshes your
8 recollection further.

9 The highlighted portion, about two-thirds of the
10 way it says: There are two key points to consider here,
11 A, because some of you live in an area where it is
12 logistically impossible to take advantage of your
13 ownership interest in the airplane, you may not care about
14 this particular asset very much. But the good news for
15 all of you is that regardless of where you live, your
16 investment in this entity will cost you absolutely
17 nothing, unless you elect to use the airplane, in which
18 case you will pay the standard fuel costs, pilot fees,
19 etcetera. There will be no cost for the use of the
20 airplane itself because you already own it. If any of you
21 want to use it, just call me and I will make the
22 arrangements. I will also be providing you with a
23 website, user name and password so you can track where the
24 airplane is 24/7/365.

25 Again unless you use it it will cost you

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1 nothing. I am responsible for the maintenance, insurance
2 storage etcetera.

3 Does that refresh your recollection that the
4 Global Settlement Fund was used to acquire the Falcon 10,
5 and it became an interest that you and others had as a
6 result of that acquisition by Global Settlement Fund's
7 money?

8 A I think this is part of the Diamonte, so that's what
9 I thought the Global Settlement Fund was for, was the
10 Mexico projects and stuff and I guess this was part of
11 that but it came from Jowdy.

12 I remember at one point I actually asked -- I
13 was going to fly back with my family from Arizona and I
14 think I knew the plane was there. I never checked this
15 website or whatever it is and we weren't able to use it.

16 Phil found me another plane and it was a prop,
17 silver plane. I don't know even if that is the plane, but
18 that's the one I used to go once, Arizona-Canada.

19 Q Let me ask you, would you agree that this e-mail is
20 refreshing your recollection to the acquisition of an
21 airplane by Global Settlement Fund monies and that you
22 obtained, obtained, secured an interest as a result of
23 that acquisition?

24 MS. KOMATIREDDY: Objection to form.

25 THE COURT: Overruled. You can answer.

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1 A I think it does from part of the Mexico situation
2 with Jowdy.

3 Q And picking up what you had mentioned earlier about
4 the use of the airplane, let me show you what has been
5 marked as C 28 A. You recognize this as an e-mail from
6 Mr. Constantine on July 30, 2009, providing photographs of
7 the airplane that was acquired and the airplane that you
8 subsequently used.

9 There's three pages. You can look at them all.

10 A I remember sending -- them sending pictures of the
11 plane. I can't remember if it was before or after they
12 ran on it or cleaned it up, but this is not the plane I
13 used.

14 Q Would you agree this is an e-mail from
15 Mr. Constantine to you and others in the group regarding
16 the acquisition of the Falcon 10?

17 A Yes.

18 MR. LARUSSO: I ask C 128 be received.

19 MS. KOMATIREDDY: No objection.

20 MR. HALEY: No objection.

21 THE COURT: C 128 is received in evidence.

22 (Whereupon, Defendant's Exhibit C 128 was
23 received in evidence.)

24 MR. LARUSSO: If I may publish portions of it.

25 This is C 128 in evidence, an e-mail from Mr. Constantine,

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1 July 30, 2009, to a number of other individuals including
2 to yourself. I'm pointing to your e-mail address. Is
3 that correct, Mr. Sydor?

4 A Yes, it's there.

5 Q And the content of this e-mail is very short.

6 All: Here are the photos that were supposed to
7 be attached to the last e-mail that I sent regarding the
8 airplane. I will forward the operating agreement for
9 those of you that haven't signed it yet so you can sign it
10 and e-mail or fax it back to me.

11 Thanks.

12 TC?

13 Do you remember discussing with Mr. Constantine
14 an ownership interest in the Falcon 10?

15 A Sorry. Say that again.

16 Q Do you recall discussing with Mr. Constantine your
17 ownership interest in the Falcon 10 and the possibility of
18 receiving an operating agreement in regards thereto?

19 A Well, after I think they recovered the plane, then,
20 yeah, I had conversations about the airplane with him.

21 Q And receiving an ownership interest in it --

22 A I believe it got spread out to it, yes.

23 Q -- You and the other hockey players?

24 A Yes.

25 MR. LARUSSO: If I overtalk and you have to

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1 finish the answer, please, just continue.

2 Q Now, you testified just a few moments ago you
3 remember using the airplane but not this one. Is that
4 your testimony?

5 A No, I never used this airplane. I used an airplane.
6 I used to fly when I was making good money, we would fly
7 private with small children and it was just easier. I've
8 used charter airplanes before.

9 Q Well, do you recall, and you can look at this e-mail
10 again, that the airplane, the Falcon 10, was acquired and
11 put into a company called AZ Falcon Partners?

12 A I believe so, yes.

13 Q So that if you received an e-mail from
14 Mr. Constantine regarding the use of an airplane that was
15 owned by AZ Falcon Partners, would it refresh your
16 recollection that it was the Falcon 10 that was being
17 discussed and not some other airplane?

18 MS. KOMATIREDDY: Objection to form.

19 THE COURT: Sustained.

20 Q I will show you three exhibits. 129 for
21 identification, that is, C 129; C 129 A, and C 129 B.

22 I ask you if you remember receiving an e-mail
23 from Mr. Constantine with documentation showing your use
24 of an airplane owned by AZ Falcon Partners at or about
25 August 31, 2009. Take a look at all three of those

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1 documents. I'm particularly referring you to 129 A in the
2 upper left-hand corner, the second line, please.

3 A Yes.

4 Q Do you have a recollection having looked at these
5 documents that you used the Falcon 10, August 22, 2009,
6 and this e-mail from Mr. Constantine to you was in
7 reference to the invoice, the payment for the use of that
8 plane?

9 MS. KOMATIREDDY: Objection. Content of the
10 record.

11 THE COURT: Overruled.

12 A Now, I do recall using -- I don't know if this was
13 this exact plane, I recall -- I knew I flew Kamloops.

14 Q That's a location in Canada?

15 A Yes, my summer home.

16 Q Looking at these documents, does it help refresh your
17 recollection that flight you used the Falcon 10, and 129 A
18 is the invoice for it?

19 A Yeah, I guess so. I didn't recall then, but it shows
20 I used it.

21 MR. LARUSSO: Your Honor, may I ask 129 A and B
22 be received at this time.

23 MS. KOMATIREDDY: Voir dire.

24 THE COURT: Yes.

25

Sydor - Cross/LaRusso

2276

1 VOIR DIRE EXAMINATION

2 BY MS. KOMATIREDDY:

3 Q You testified you used a private plane from
4 Mr. Kenner and Constantine once?

5 A Yes.

6 Q You remember that plane being a propeller plane?

7 A A two-door, a destination of Edmonton.

8 Q You specifically testified it was a prop plane, not
9 the Falcon?

10 A Yes, it was, I guess, a silver prop plane.

11 Q Looking at Constantine Exhibits 129, 129 A and 129 B,
12 the same ones in front of you, do you actually
13 specifically remember getting this e-mail in the
14 attachments?

15 A I don't recall, no.

16 Q Do you specifically remember using a Falcon?

17 A I don't exactly know what planes I used, like when I
18 would charter, what it was, the model or make.

19 Q But you remember it was a prop plane, right?

20 A I remember that one because it was actually my dad
21 joked about it when I showed up. I was embarrassed, yeah.

22 MS. KOMATIREDDY: I object.

23 MR. LARUSSO: I ask it be received.

24 THE COURT: We'll discuss it during the break.

25 MR. LARUSSO: May I have a brief sidebar on

Sydor - Cross/LaRusso

2277

1 this? It will take just two seconds.

2 (Whereupon, at this time the following took
3 place at the sidebar.)

4 (Continued.)

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Sydor - Cross/LaRusso

2278

1 MR. LARUSSO: The reason I'm asking for the
2 sidebar, and I apologize and I understand in the throws of
3 the trial the prosecutor did an excellent job, I
4 appreciate what he did, but yes, this did refresh his
5 recollection.

6 THE COURT: He didn't actually say that. He
7 said I guess I did because that's what it says.

8 MR. LARUSSO: This is not a fabricated document,
9 Judge. These are documents that can be easily verified.

10 THE COURT: That's why I wanted to discuss it
11 during the break. I didn't want to waste the jury's time.

12 MR. LARUSSO: I didn't realize. I apologize.

13 (End of sidebar conference.)

14 (Continued.)

15 Q Do you recognize the names Mark Nolan and Jeff Bevis.

16 A I mean maybe they are pilots. That's what it is
17 under. I'm not good with names, no.

18 Q Are you still looking at that exhibit?

19 A No.

20 Q Okay. You can, if you wish, with regards to the last
21 question. Do you have any recollection of using the
22 Falcon 10 with Mr. Kenner and flying from Columbus to
23 Kamloops?

24 A Yes, that was -- once again I don't know if it's
25 exact, like the make and model of the airplane but I do

Sydor - Cross/LaRusso

2279

1 remember flying there. That was after I got traded to
2 Columbus and we were going to -- he was going to help go
3 around with the realtor for us.

4 Q And was that a jet airplane that was used?

5 You didn't pilot it, is that correct?

6 A I didn't pilot it.

7 Yeah, they are mostly -- the only one time was a
8 prop plane, so it would have to be a jet.

9 Q The Falcon 10?

10 A Once again I can't -- I don't know if there was a
11 Falcon 10 or what model it was.

12 Q Okay.

13 And lastly on Defendant's Exhibit C 31, I'm just
14 going to ask you one more question on the second page of
15 the exhibit to see if this helps refresh your recollection
16 regarding additional information from Mr. Constantine.

17 Finally, this is just one of the investment
18 acquisitions and business solutions that overlaid over the
19 legal strategy that we presented as part of the Global
20 plan. I have attached the documentation for all of you to
21 sign for your respective share of ownership in the
22 airplane company. It is a very basic operating agreement,
23 but you should definitely read it, sign it and send it
24 back to me at your convenience.

25 Please do not hesitate to call me if you have

Sydor - Cross/LaRusso

2280

1 any questions. If you will be receiving a -- you will be
2 receiving a similar agreement for the ownership interest
3 that we acquire from the bad guys for their Eufora shares,
4 as well as the Avalon hangar building which is actually
5 where the plane is kept and where Eufora is headquartered.
6 I have also attached some photos of the plane.

7 Does that refresh your recollection that
8 Mr. Constantine communicated to you and the others that
9 the Global Settlement Fund had multiple purposes including
10 some of the ones I just read to you, Mr. Sydor?

11 A Well, I don't recall it but at the beginning of this,
12 the legal strategy of the Global Settlement, hence from
13 the Jowdy issue, the Mexico stuff, I don't recall seeing
14 this, but --

15 Q Did you ever hear the phrase "the bad guys"?

16 A Yeah, that was used a lot. Well, not a lot. Well,
17 yeah, I heard "the bad guys."

18 Q Who are "the bad guys"?

19 A It's a whole bunch of different situations.

20 Q In this context.

21 A I believe that is the Mexico situation.

22 Q You agree with me that "the bad guys" were Nolan,
23 Juneau and Moreau?

24 A Yes, I think I recall something like that. Yeah.

25 Q And part of the discussions regarding the Global

Sydor - Cross/LaRusso

2281

1 Settlement Fund was to acquire their interests on behalf
2 of the other investors; is that correct?

3 A Well, I don't know the whole specifics on that whole
4 feud, but --

5 Q But would you agree it was part of the Global
6 Settlement Fund plan or strategy as far as you know?

7 MS. KOMATIREDDY: Objection. Asked and
8 answered.

9 THE COURT: Sustained.

10 Q Mr. Sydor, last question on the airplane.

11 Do you remember having e-mail BlackBerry
12 exchanges with Mr. Constantine on March 2, 2010 regarding
13 payments for the use of one of the airplane or the
14 airplane owned by AZ Falcon Partners, especially in
15 regards to the Kamloops trip.

16 Do you recognize this as an e-mail exchange you
17 and Mr. Constantine had with regards to expenses for that
18 trip, and again dated March 2, 2010. Is that an e-mail
19 exchange that you and Mr. Constantine had regarding the
20 subject that I just mentioned?

21 A I believe this is when I first met him.

22 Q We're talking about an e-mail exchange in 2010, your
23 recollection was having met him sometime after you had
24 acknowledged the purpose of the Global Settlement Fund on
25 May 18, 2009, does this refresh your recollection to

Sydor - Cross/LaRusso

2282

1 another event you might have met him?

2 MS. KOMATIREDDY: Objection to form.

3 THE COURT: Overruled. You can answer.

4 A Say it again, please.

5 Q Does that help refresh your recollection to a second
6 time you met Mr. Constantine?

7 A Well, this is the one time that I was talking about
8 before where I met him at the buildings with Tyson and we
9 went down after for lunch. That's when -- I can't recall
10 meeting Tommy again.

11 Q Well, that e-mail helped you remember the occasion
12 you remembered the one time you met him. Does it also
13 help refresh your recollection that an e-mail exchange
14 occurred with Mr. Constantine regarding payment for the
15 use of the airplane owned by AZ Falcon?

16 A I guess, yes.

17 (Continued on the next page.)

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Sydor - Voir Dire/Ms. Komatireddy

2283

1 CROSS-EXAMINATION (Continuing)

2 BY MR. LaRUSSO:

3 Q Well, we can't guess.

4 A So ask it again.

5 Q Do you recall having a discussion via e-mail or
6 Blackberry with Mr. Constantine regarding your use of the
7 AZ Falcon Partners plane and paying for expenses for that
8 trip?

9 A Yeah.

10 MR. LaRUSSO: Your Honor, I ask that be
11 received?

12 MS. KOMATIREDDY: Voir dire, your Honor.

13 THE COURT: Yes.

14 VOIR DIRE EXAMINATION

15 BY MS. KOMATIREDDY:

16 Q Mr. Sydor, do you have this e-mail? This e-mail,
17 what is the e-mail address at the top?

18 A Blackberry dot net.

19 Q Putting the defense attorneys' questions aside, do
20 you on your own, do you actually independently recollect
21 this e-mail conversation?

22 MR. LaRUSSO: Objection, your Honor.

23 MR. HALEY: I would object as well, Judge.

24 THE COURT: To the form.

25 BY MS. KOMATIREDDY:

Sydor - Cross/Mr. LaRusso

2284

1 Q Do you remember exchanging these e-mails with
2 Mr. Constantine in 2010?

3 A I don't recall it. I mean I just said it looks like
4 I did but I don't recall it.

5 MS. KOMATIREDDY: We object.

6 THE COURT: Do you want to discuss it further?

7

8 CROSS-EXAMINATION (Continuing)

9 BY MR. LaRUSSO:

10 Q By the way, in evidence is C-29. This is an e-mail
11 or group e-mail from Mr. Constantine. And you see your
12 e-mail address as part of the e-mail?

13 A Yes.

14 Q Do you recall receiving an e-mail from
15 Mr. Constantine, June 18, 2009, discussing a newspaper
16 article. And it is actually, the caption of this is
17 called, Media Counterpunch.

18 Do you recall this?

19 A I don't recall.

20 Q I'm sorry?

21 A I don't recall, no.

22 Q Let me show you what has been marked for
23 identification as C-29A. You can leave that there.

24 I would ask you to put that next to -- okay,
25 take a look at C-29A for identification.

Sydor - Cross/Mr. LaRusso

2285

1 Does that refresh your recollection that you did
2 in fact receive that e-mail that you acknowledged in an
3 e-mail of your own dated June 18, 2009?

4 A Yes.

5 Q That is your e-mail to Mr. Constantine following that
6 e-mail we just displayed to the jury that is up here,
7 right?

8 A Yeah. I don't remember it but I honestly --

9 Q But look at this. You read the e-mail and you
10 responded to it.

11 Is that correct, that is what C-29A reflects,
12 right?

13 A Yes.

14 MR. LaRUSSO: I ask that C-29A be received, your
15 Honor.

16 MS. KOMATIREDDY: Same objection, your Honor.

17 THE COURT: We'll discuss it.

18 BY MR. LaRUSSO:

19 Q Do you know a man by the name of Michael Stolper?

20 A Yeah. He was a lawyer out of New York, I believe.

21 Q Did there come a point in time that you actually met
22 with Mr. Stolper?

23 A Met with Mr. Stolper? I know he was on a conference
24 call. I'm not sure if I met him in person.

25 Q Do you recall a trip to New York -- withdraw that.

Sydor - Cross/Mr. LaRusso

2286

1 Do you know where his offices were located?

2 A No.

3 Q Did you ever take a trip to New York and possibly
4 meet with Mr. Stolper?

5 A I don't recall that.

6 Q Your recollection is you recall participating in a
7 conference call. Can you give us -- withdraw that.

8 Did anyone bring to your attention the name
9 Mr. Stolper before you participated in the conference
10 call?

11 A I believe it was a situation where Brian Berard was
12 involved, Tommy Constantine, and he was a lawyer out of
13 New York.

14 Q And was your participation in that conference call
15 for the purposes of soliciting your financial support in
16 regards to allegations that were being made against
17 Mr. Constantine at that point?

18 MS. KOMATIREDDY: Objection, your Honor

19 THE COURT: Overruled.

20 You can answer.

21 A Would you re-ask the question?

22 BY MR. LaRUSSO:

23 Q I'll break that down.

24 Before you participated in this conference call,
25 you spoke to a number of people about Mr. Stolper,

Sydor - Cross/Mr. LaRusso

2287

1 correct?

2 A I guess other people talked about Mr. Stolper.

3 Q And some of those people were Mr. Berard.

4 Do you recall anyone else?

5 A I believe Mr. Constantine, Berard, someone else I
6 can't remember now.

7 Q Do you know what the purposes of -- withdraw that.
8 What do you remember being discussed -- withdraw that.

9 Do you recall amongst the topics discussed on
10 that conference call was taking over the control of Eufora
11 from Mr. Constantine?

12 MS. KOMATIREDDY: Objection.

13 THE COURT: Overruled.

14 A It was in the regards of taking over. I can't
15 remember who. I think it was a feud between
16 Mr. Constantine and Mr. Kenner.

17 Q And Mr. Stolper was on the side of the group looking
18 to take over control of Eufora from Mr. Constantine. Is
19 that correct?

20 A Yes.

21 I believe Brian Berard was -- some other fellow,
22 I can't remember who it was. But I believe it was to
23 figure out where all the money went. I believe there was
24 a feud between Tommy Constantine and Phil Kenner.

25 Q Part of the discussion centered about taking control

Sydor - Cross/Mr. LaRusso

2288

1 over Eufora from Mr. Constantine?

2 MS. KOMATIREDDY: Objection.

3 THE COURT: Overruled.

4 You can answer.

5 A Can you re-ask?

6 BY MR. LaRUSSO:

7 Q Amongst the discussions was the topic of taking
8 control over Eufora from Mr. Constantine?

9 A Yes, I believe so.

10 Q Well, do you recall that part of the discussion
11 centered upon applying Eufora's loan to be able to obtain
12 that control.

13 Do you recall that?

14 A I can't recall the specifics of it.

15 Q By the way, you did sign on to have Mr. Stolper
16 represent you in regards to this dispute that was going
17 on.

18 Is that correct?

19 A Yes. Talking to the other players that were involved
20 and I just kind of followed, yes.

21 Q When you met -- I apologize -- the testimony was when
22 you participated in the conference call, when you talked
23 to these other individuals about taking over the
24 company -- I withdraw that.

25 Do you remember a meeting where you personally

Sydor - Cross/Mr. LaRusso

2289

1 attended with some of these individuals that were taking
2 over the company, where you hooked your phone or connected
3 your phone to Mr. Constantine so he could listen in on the
4 conversation?

5 Do you recall that?

6 A I don't recall, no.

7 Q Let me show you what has been marked for
8 identification, the full Exhibit is 37. One of the pages
9 is C-37C for identification. I know it's a tough copy.
10 But do you recognize your signature on this?

11 A Yes.

12 Q Do you remember signing a document similar to this?

13 A I'm not sure what this document is.

14 Q Take a look at it. Either this document or any other
15 page in it, and see if it refreshes your recollection.

16 And I may be able to help you. This is a copy,
17 but it actually is a little clearer. If I may, your
18 Honor?

19 Read those paragraphs which are part of the
20 written consent of members. It's the third page. So you
21 can look at those three pages and see if that helps
22 refresh your recollection as to why you signed that
23 particular document or believe you did?

24 A So what are you asking me?

25 Q Does that refresh your recollection as to why your

Sydor - Cross/Mr. LaRusso

2290

1 signature appears on the exhibit C-37C?

2 A I guess that is why I signed it.

3 Q Unfortunately we can't guess.

4 Do you have a recollection of signing that
5 document and retaining Mr. Stolper for the purposes of
6 representing you in regards to the dispute with
7 Mr. Constantine?

8 A I don't recall. But I signed it. That is my
9 signature.

10 Q And taking a look at the first page of the document,
11 the yellow highlighted portion.

12 Do you remember that part of the reason for the
13 representation would be to allow Mr. Stolper and his
14 repetitive to buy the Eufora loan?

15 A To buy the Eufora loan?

16 Q Right.

17 Do you remember that just looking at the first
18 page of the entire document?

19 A Oh, this one?

20 Q Please.

21 A I recall that Mr. Stolper was going to be -- I recall
22 that maybe like that what he was buying was part of
23 Eufora. I don't recall his paying off the loan. But I
24 recall, I think that was his --

25 Q Is the word strategy, dealing with this situation?

Sydor - Cross/Mr. LaRusso

2291

1 A Yes, yes, that's right.

2 Q Do you remember attending a shareholder meeting, a
3 Eufora Shareholder meeting either in person or over the
4 telephone?

5 A A shareholder meeting? I don't recall.

6 Q Do you remember calling in to a meeting that
7 Mr. Constantine was holding for other Eufora investors?

8 A I believe -- I remember being on a conference call
9 with Mr. Stolper, yes.

10 Q I'm talking about Mr. Constantine now on a totally
11 separate occasion. I'm sorry. I apologize. I should
12 have made that clear.

13 A Ask again, sir.

14 Q Do you remember participating in a shareholders'
15 meeting, Eufora shareholders meeting that was being run by
16 Mr. Constantine. You participating by way of calling in?

17 A I think, I believe I was on a conference call with
18 Mr. Constantine, yes.

19 Q Do you remember some of the other participants on
20 this?

21 A I don't recall now.

22 Q There were others?

23 A I think, so, yes.

24 Q Mr. Berard being one?

25 A I believe so, yeah.

Sydor - Cross/Mr. LaRusso

2292

1 Q And do you have a recollection of any other people
2 such as Nick Privitello or Bob Rizzi? Do those names mean
3 anything? Do you remember them?

4 A No.

5 Q So in this particular conference call, do you have a
6 recollection of what was discussed?

7 A I can't say that I remember exactly, no.

8 Q Let me show you what has been marked 89A. Hopefully
9 we'll finish with this, this one other area.

10 I would like you to take a look at this,
11 particularly the last page, the highlighted portion. And
12 the question would be, Does the refresh your recollection
13 that in a conference call that you were alluding to
14 Mr. Constantine made an offer to pay back one hundred
15 percent to several of the Eufora investors?

16 Take a look at those. That is my question and
17 see if that helps refresh your recollection?

18 A Ask your question again, sir. I was reading.

19 Q Does this help to refresh your recollection after you
20 look at it, particularly the last page, the highlighted
21 portion, that during the conference call that we just
22 talked about, Mr. Constantine made an offer to some of the
23 Eufora investors to pay back a hundred percent of their
24 money?

25 THE COURT: Why don't you focus him on the page

Sydor - Redirect/Ms. Komatireddy

2293

1 that you're referring to.

2 MR. LaRUSSO: I should have done that. I asked
3 him to look at the highlighted portion.

4 BY MR. LaRUSSO:

5 Q Let me just show it to you and see if that helps.

6 A I don't recall that.

7 MR. LaRUSSO: Thank you, your Honor.

8 No further questions. Thank you.

9 THE COURT: Ms. Komatireddy?

10

11 REDIRECT EXAMINATION

12 BY MS. KOMATIREDDY:

13 Q Did Mr. Constantine ever offer you a hundred percent
14 of your money from the Eufora investment.

15 A I don't believe so, no.

16 Q Did you ever get any money back from Eufora?

17 A No.

18 Q Let me show you this about Hawaii, okay?

19 I'm showing you what is in evidence as Kenner
20 64. Do you remember testifying about that letter?

21 A Yes.

22 Q And do you remember you identified that as your
23 signature, correct?

24 A Yes.

25 Q You don't specifically remember signing that?

Sydor - Redirect/Ms. Komatireddy

2294

1 A Specifically -- it's my handwriting on a piece of
2 paper. I don't remember. I don't recall. But it's my
3 signature.

4 Q And then Mr. Haley asked you about a series of
5 documents, and he asked you whether it appeared to be.

6 Do you remember those questions?

7 A Yes.

8 Q All right, so, going through this document.

9 Looking at Kenner 66, when he asked you whether
10 it appeared to be your signature, you said something like,
11 It appears to be.

12 Is that your signature?

13 A That is not my signature.

14 MR. HALEY: I'm sorry? What was that?

15 A That is not my signature.

16 Q Looking at Kenner 67.

17 Is that your signature?

18 A No.

19 Q Going to Kenner 68.

20 Is that your signature?

21 A No.

22 Q Kenner 69.

23 Is that your signature?

24 A No. These are all upright. Mine has a slant.

25 Q Kenner 72.

Sydor - Redirect/Ms. Komatireddy

2295

1 Is that your signature?

2 A No.

3 Q Do you remember when Mr. Haley asked you about
4 whether you were involved in a complaint against
5 Mr. Constantine.

6 Do you remember that question?

7 A Yes.

8 Q And he was referring to this document, page 72. You
9 said not, even close.

10 Are you sure that is not your signature?

11 A Positive.

12 Q Mr. Haley also read into the record a sentence from
13 this document identified as K-65.

14 Do you remember that? Do you remember reading
15 that?

16 A Yes.

17 Q Now just for the record, do you k now where this
18 comes from?

19 A No. I don't know.

20 Q Now Mr. Haley asked you how many times you had
21 conversations with Kenner. And in particular he asked you
22 about where you were in 2008 and 2009.

23 Do you remember those questions?

24 A I don't exactly remember the questions.

25 Q I'll ask a question.

Sydor - Redirect/Ms. Komatireddy

2296

1 The letters, the default letters that I showed
2 you 2118 through 2120.

3 You testified that you had seen those before,
4 right?

5 A Right.

6 Q In the 08/'09 season and the '09/'010 seasons, where
7 were you?

8 A I was, '08/'09, I got traded back to Dallas from
9 Pittsburgh. And I finished my season there. And in '09 I
10 was in St. Louis.

11 Q You were moving around quite a bit?

12 A Yes.

13 Q About those default letters.

14 During that time period or at any time period,
15 did you talk to Mr. Kenner on the phone about loaning your
16 name going into default?

17 A I have no idea.

18 Q Now Mr. Haley asked but papers you had about property
19 in Hawaii, right?

20 A Paper.

21 Q You had discussed a binder, I think?

22 A Yes.

23 Q I'm going to show you what is in evidence as
24 Government Exhibit 2135. That is a loan transaction
25 history. Was that loan transaction history, Government

Sydor - Redirect/Ms. Komatireddy

2297

1 Exhibit 2135, in the binder that Mr. Kenner gave you?

2 A I don't believe so, no.

3 Q Did he ever give you that kind of detail on where
4 your money went?

5 A No.

6 Q Now let's talk about the GSF.

7 Mr. LaRusso showed you an e-mail about referring
8 to various legal actions in connection with the GSF.

9 When you first learned about the loan -- what
10 did the defendant tell you it was for?

11 MR. LaRUSSO: Your Honor, I object to the form
12 of the question.

13 BY MS. KOMATIREDDY:

14 Q What did the defendant Kenner tell you?

15 A It was for legal proceedings against Mr. Jowdy down
16 in Cabo in the -- project that we had, legal fees and loan
17 fees.

18 Q When you decided to put money into the fund, why did
19 you do it?

20 A Well, because there's obviously an argument going on
21 between them. And it was part of an investment Mr. Jowdy
22 is saying this. This golf course I had been on the
23 property before was starting to get built. And with Phil,
24 actually, yes I think Phil came to, I believe Phil was
25 there in Mexico. I can't -- I don't believe he came right

Sydor - Redirect/Ms. Komatireddy

2298

1 on the property with us, with me and the other two. And
2 it was, everything started taking off, the structure, the
3 water, that not sand, but a water plant I guess, and stuff
4 like that. And then I mean the course was doing really
5 well. I had not been down --

6 Q So why did you put money into the fund?

7 A Because I wanted the fight to be -- this could be.

8 Q You refer to this, what are you referring to?

9 A The Cabo resort.

10 Q Did you have any interest in buying a plane or a
11 hanger or a condominium?

12 MR. LaRUSSO: Objection, your Honor, beyond the
13 scope.

14 THE COURT: Sustained.

15 BY MS. KOMATIREDDY:

16 Q Mr. LaRusso asked you about whether the legal --
17 involved assets including a hangar.

18 Did you have any interest in funding lawsuits or
19 lawyers or law firms that acquired a hanger?

20 MR. LaRUSSO: Same objection, your Honor.

21 A No.

22 THE COURT: I'll let the answer stand.

23 I think you need to move on. You went through
24 this more than once.

25 BY KOMATIREDDY:

Sydor - Recross/Mr. Haley

2299

1 Q Mr. Sydor, Mr. Haley asked you if you had ever hired
2 a lawyer to help you in connection with your investments.

3 Do you remember that question?

4 A Yes.

5 Q Did you hire Phil Kenner?

6 A As a financial advisor, yes.

7 Q To do what?

8 A Be my financial advisor.

9 MS. KOMATIREDDY: No further questions.

10 THE COURT: Mr. Haley?

11 MR. HALEY: Yes, sir.

12 RECROSS-EXAMINATION

13 BY MR. HALEY:

14 Q Sir, this is not the first time that you testified in
15 a legal proceeding as relates to this case, is it?

16 MS. KOMATIREDDY: Objection.

17 THE COURT: Overruled.

18 You can answer.

19 A Well, I did the deposition.

20 BY MR. HALEY:

21 Q Well, did you testify before a Grand Jury in the
22 Southern District of New York with reference to this
23 particular case, and specifically documents that you
24 signed as relates to your Northern Trust account?

25 A This is the first time I have been in front of a

Sydor - Recross/Mr. Haley

2300

1 jury.

2 Q Well, my question, sir, is, did there come a point in
3 time, specifically March 29, 2011, that you testified in a
4 Grand Jury with reference to this matter where you were
5 asked questions about the signature on various documents?

6 A No, those questions were in a deposition I did in New
7 York. Oh, yes, there was people there.

8 Is that the Grand Jury? In the deposition?

9 Q Sorry, I don't want you to be confused. Do you
10 recall at some point, specifically March 29, 2011, being
11 in Manhattan, New York, at the US Attorney's Office, and
12 appearing before a Grand Jury to answer questions, with 23
13 other people present in the room?

14 A Yes.

15 Q And during the course of that testimony, I take it,
16 it was your desire and your effort to answer questions
17 truthfully, correct?

18 A Yes.

19 MR. HALEY: Your Honor, if I may, I need to make
20 a copy of a document in order to move forward.

21 If we can take a brief break at this point.

22 THE COURT: We'll take the afternoon break. And
23 don't discuss the case.

24 MR. HALEY: Thank you, sir.

25 (A recess was taken.)

SYDOR-RE CROSS-HALEY

2301

1 THE COURT: Please be seated.

2 MR. HALEY: Judge, if I may -- I'm copying a
3 document. Your Honor, I would say several months ago, if not
4 six months ago or longer, I had raised by way of Rule 16
5 demands, identification of all the documents that the
6 government alleged to be forged by the witnesses by the time
7 of trial in the matter.

8 Indeed, my recollection is that after some period of
9 time, and I mean from the point of my demand which I believe
10 was June of 2014, such documents were not provided by the
11 government until October of 2014. Those documents consisted
12 of four documents. It consisted of a revolving of credit
13 document the government maintained was a document containing
14 the forged signature of Ken Jowdy. It consisted of two
15 documents known as a Funding Consulting Agreement which the
16 government alleged that the signature of John Kaiser was
17 forged or fictitious. There was some confusion whether the
18 document was forged, fictitious. And the fourth document is a
19 document which was actually in Spanish, wherein Mr. Kaiser
20 alleged that his signature on the side of the document was
21 forged.

22 My memory, Your Honor, is that the government, in
23 its response said that something to the affect that these are
24 the documents we allege to be forged, and then there was a
25 paren, among others. I raised that as an issue, I believe, in

SYDOR-RECROSS-HALEY

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1 October. And my memory of the Court's instruction to the
2 government was as follows, in substance: You should contact
3 your witnesses and identify those documents that the
4 government alleges to be forged upon the trial of this action.
5 That was my memory of the Court's instructions to the
6 government.

7 Your Honor, I surmise that the defendant's request
8 for documents that were alleged to be forged by the government
9 in its case in chief ought to be made known to the defense to
10 avoid unjust surprise and prejudice. I was obviously
11 surprised by the testimony of this witness who, when on
12 redirect, went from that appears to be my signature to say
13 well, that's actually not my signature, rather than taking
14 that opportunity when asked on cross-examination well, it
15 doesn't appear to be my signature because I don't sign that
16 way. At this point, clearly identified without equivocation
17 based upon a litany of rapid fire leading questions, that's
18 not my signature, that's not my signature, that's not my
19 signature.

20 I say this, Judge, because the remedy, from my
21 perspective, as I'm endeavoring right now to collate
22 information that I believe will be demonstrative of the
23 falsity of that testimony. Had I known in advance I would
24 have been able to address that by way of pretrial preposition
25 sometime ago. I say that, Judge, as I will endeavor, at this

SYDOR-RE CROSS-HALEY

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1 point, to question this witness in that regard. But I'm going
2 to reserve the right, Judge, to recall this witness under
3 these circumstances. That's my application to the Court.

4 THE COURT: Well, obviously, let's see what you can
5 do with what you have here. If you believe there's a basis to
6 recall him based upon his conditional information presented,
7 I'll certainly hear you.

8 MR. HALEY: Thank you, sir.

9 MR. MISKIEWICZ: Before we move on, may I address
10 the issue?

11 THE COURT: Are we going to get this witness out of
12 here? I'm concerned we're not going to get him out of here at
13 this point. So if you want to make it clear on the record
14 now, Mr. Sydor may have to come back tomorrow.

15 MR. MISKIEWICZ: Just take a second, Judge.
16 3500 DS-1, it's covered in Mr. Sydor's grand jury minutes.
17 The same thing Mr. Haley tried to admit, he was indicating
18 that they don't look like my signature. That's my only point.

19 THE COURT: In the grand jury testimony?

20 MR. MISKIEWICZ: In the grand jury testimony. The
21 little loop doesn't look like mine, et cetera.

22 MR. HALEY: We can debate this. The exhibits I
23 showed him were not exhibits that were introduced in the grand
24 jury testimony. The Northern Trust documents, voluminous that
25 he signed over a period of time.

SYDOR-RE CROSS-HALEY

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1 Thank you, Judge. I'd like to get the witness on
2 the stand.

3 THE COURT: Let's bring in the jury and the witness.
4 (Witness resume the stand.)

5 THE CLERK: All rise.
6 (Whereupon the jury enters the courtroom at
7 4:04 p.m.)

8 THE COURT: You may be seated.
9 Go ahead, Mr. Haley.

10 MR. HALEY: Thank you, Judge.

11 Your Honor, in view of the testimony that was -- let
12 me begin this way.

13 RE CROSS EXAMINATION

14 BY MR. HALEY:

15 Q Sir, will you kindly take a look at Kenner Exhibit 74.
16 (Hanging.)

17 Is that your signature? It's a photocopy, sir. Is
18 that your signature?

19 A I believe it is, yes.

20 MR. HALEY: Your Honor, I'd offer this into evidence
21 as Kenner Exhibit 74.

22 MR. LaRUSSO: No objection.

23 MR. MISKIEWICZ: No objection.

24 THE COURT: Kenner Exhibit 74 is admitted.

25 (So marked as Kenner Exhibit 74 in evidence.)

SYDOR-RE CROSS-HALEY

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1 Q Sir, as relates to what is marked now as Kenner
2 Exhibit 74, sir, we can agree that it's dated May 3rd, 2004,
3 is that correct?

4 A It appears, yes.

5 Q The Schwab Institutional, correct?

6 A Yes, I believe this is all in trust to Schwab.

7 Q Sir, as relates to this particular document that is
8 signed by you on April 20th, 2004, this is, by its terms, the
9 authorization by which you are moving your bonds to Northern
10 Trust, is that correct?

11 A I believe so, yes.

12 Q And to your knowledge, does this document, as relates to
13 the bonds that were being used by -- being moved from Schwab
14 International to Northern Trust have relevance to the line of
15 credit for which you later received a default letter? Or you
16 later saw the default letter on May 17th to May 20th,
17 according to your testimony.

18 MS. KOMATIREDDY: Objection to form.

19 THE COURT: Sustained as to form.

20 Q Well, with reference to this particular document, was
21 today the first time that you saw this particular --
22 withdrawn.

23 Did the government show you this particular document
24 when you met with them between May 17th and May 20th of this
25 year?

SYDOR-RE CROSS-HALEY

2306

1 A I believe so, yes.

2 Q Would you describe the conversation that you had with the
3 government as relates to this particular document? What did
4 you say to them and what did they say to you?

5 A Again, I can't recall the full conversation that I had
6 about it. It was a lot.

7 Q Sir, would you kindly take a look at a document marked as
8 Kenner Exhibit 75. Take your time.

9 (Handing.)

10 A (Witness complies.)

11 Q Is that your signature, sir?

12 A I'm not sure.

13 Q As you sit here under oath today, can you say for
14 certainty that you did not sign this document?

15 A I can't say I signed it, I can't say I didn't sign it.

16 Q But is it your testimony, sir, that during the redirect
17 examination by the government of all those documents that you
18 were shown in rapid succession, that it's your testimony under
19 oath that you did not sign any of those documents? Is that
20 your testimony?

21 A I'm pretty sure I didn't sign those, yes.

22 Q You're pretty sure you didn't sign them. That's your
23 best recollection, sir, correct?

24 A Very positive.

25 Q Did you take note of the contents of the document before

SYDOR-RECROSS-HALEY

2307

1 you told the government on redirect that it's not my
2 signature, and now you tell us that you're pretty sure it's
3 not your signature? Did you take a look at the content of it?

4 MS. KOMATIREDDY: Objection, Your Honor. Please
5 specify the document.

6 Q Any of the documents, sir, that I showed you, and they
7 were Exhibits 66, 67, 68, 69, and 72. I'm happy to show you
8 the documents again. They were shown to you on redirect by
9 the prosecutor.

10 As relates to these particular documents, did you
11 take note of the content of the document before you answered
12 either my question or the government's question as to whether
13 or not that was your signature?

14 A The document, I looked directly at the signature.

15 MR. HALEY: Judge, with the Court's permission, I'm
16 going to handwrite a exhibit designation on this and then at
17 some later time I'll put a sticker on the exhibit.

18 Q I'm going to show you a document marked Kenner Exhibit --
19 (Showing to Counsel.)

20 Sir, I'm going to ask you to take a look at a
21 document marked Kenner Exhibit 76. You are entitled to read
22 the whole document. I ask you to pay particular attention to
23 the next page.

24 A You want me to read through it?

25 Q You are certainly entitled to look at the entire

1 document, sir. But I'm going to draw your attention to this
2 portion of the document (indicating).

3 Now, on page 2 of that document, is or is that not
4 your signature, Mr. Sydor?

5 A I don't recall signing, but it looks like my signature.
6 I can't say yes or no. I don't recall signing it.

7 Q Well, as relates to the handwriting there, sir, as you
8 were asked on redirect those series of questions about whether
9 that was your signature and you said no, with respect to that
10 document, is that your signature, yes or no?

11 MS. KOMATIREDDY: Objection. Asked and answered.

12 MR. HALEY: It's a different document.

13 THE COURT: You can answer that.

14 A I can't say yes or no. I don't know. I can't recall.

15 Q May I take Exhibit 76. Let me put an exhibit sticker on
16 it.

17 Kindly take a look again at Exhibit 76. May I see
18 that, sir?

19 A Here.

20 (Hanging.)

21 MS. KOMATIREDDY: May we have a side bar?

22 THE COURT: Yes.

23 (Whereupon a side-bar conference was conducted.)

24 (Matter continued on the next page.)

25

1 (Side-bar conference.)

2 MS. KOMATIREDDY: The previous exhibit, the witness
3 said he could not say yes or no that he signed. Mr. Haley is
4 now presenting him with the grand jury version marked with the
5 grand jury exhibit. It's a different exhibit. Over the break
6 Mr. Haley indicated he wanted to used the non-marked version
7 to impeach the witness. We told him they only way to impeach
8 him is with the actual exhibit used in the grand jury. We
9 provided that to him because he didn't have a copy. So we
10 have a situation where this is misleading. It was asked and
11 answered. He already said --

12 THE COURT: Are you going to impeach him, what he
13 said in the grand jury?

14 MR. HALEY: No.

15 MS. KOMATIREDDY: It's not inconsistent with what he
16 said.

17 THE COURT: Just make clear that this is the same
18 document so the jury is not confused.

19 MR. HALEY: I will ask him that. I didn't want him
20 to see the grand jury exhibit before he sees this. I will
21 tell him to do that.

22 (Whereupon the side-bar conference was concluded.)

23 (Matter continued on the next page.)

24

25

SYDOR-RECROSS-HALEY

2310

1 (Matter continued in Open Court.)

2 CONTINUED CROSS EXAMINATION

3 BY MR. HALEY:

4 Q Take a look at was marked as Kenner Exhibit 76 and what
5 is the document bearing the notation Grand Jury Exhibit 115.
6 It's hard to read that. Exhibit 115, sir. Does Grand Jury
7 Exhibit 115 and what I showed you as Kenner Exhibit 76 appear
8 to be the same document as relates to the first page as well
9 as the signature page? You can compare the two.

10 A They appear to be the same, yes.

11 Q Sir, when you were testifying in the grand jury, did you
12 or did you not tell the grand jury that at times you may sign
13 your name, in substance, sometimes the signature may look a
14 little different than other times, but it's still your
15 signature? Do you recall saying something like that?

16 MS. KOMATIREDDY: Objection.

17 THE COURT: Overruled.

18 You may answer if you remember that.

19 A I don't remember. I remember seeing a lot of different
20 exhibits with signatures. I don't remember exactly what I
21 said.

22 Q Well, sir, do you recall being asked this question and
23 giving this answer in the grand jury on March 29, 2011
24 (reading):

25 "QUESTION: Let me show you what's been marked Grand

SYDOR-RECROSS-HALEY

2311

1 Jury Exhibit 115. It's titled Pledge Agreement dated November
2 3rd, 2006. Let me show you, start with the signature page,
3 does that look like your signature to you?

4 ANSWER: It's a little sloppy, not as sharp."

5 Do you recall?

6 MS. KOMATIREDDY: Objection. It's a little loopy.

7 MR. HALEY: I apologize.

8 Q It's a little loopy, not as sharp. Do you recall that
9 testimony?

10 A I don't recall what I exactly said.

11 THE COURT: The government will stipulate that is
12 what the transcript says?

13 MS. KOMATIREDDY: Yes, sir.

14 Q And sir, do you recall the grand jury question (reading):

15 "QUESTION: So?

16 ANSWER: I don't think so. I mean, I signed it
17 differently. Not different, but sometimes it looks
18 different."

19 Do you recall that?

20 MS. KOMATIREDDY: Sometimes it could look different.

21 Your Honor, we'll just stipulate to this portion,
22 from page 23, line 5 to page 24, line 6. This portion
23 referencing the grand jury testimony.

24 MR. HALEY: Very well, Your Honor. I will read it
25 into the record. Thank you.

SYDOR-RECROSS-HALEY

2312

1 Q (Reading):

2 "ANSWER: I don't think so. I mean" --

3 MR. HALEY: Let me back up. I apologize.

4 Q (Reading):

5 "QUESTION: So?

6 ANSWER: I don't think so. I mean, I signed it
7 different -- not different. Sometimes it looks different.

8 QUESTION: But it doesn't look familiar to you. Is
9 that what you're saying?

10 ANSWER: It looks familiar; but...

11 QUESTION: No one here can second guess you on this
12 one. In your judgment, is this your signature, most likely or
13 most likely not?

14 ANSWER: I say most likely it is mine.

15 QUESTION: Why do you say it's most likely yours?

16 ANSWER: Sometimes it looks different. It's not the
17 exact same every time.

18 QUESTION: Without -- you're welcome to go through
19 the document as much as you want. But I'll represent to you
20 that this document is an agreement to pledge collateral for a
21 loan in the amount of the loan, which was \$850,000, putting up
22 stocks and bond. You don't remember signing anything like
23 that or agreeing to anything like that?

24 ANSWER: No.

25 QUESTION: Do you have" --

SYDOR-RE CROSS-HALEY

2313

1 MS. KOMATIREDDY: That's fine.

2 MR. HALEY: I will stop there.

3 Q Mr. Sydor, can we agree that there may be times and
4 circumstances where you sign your name to a document, and
5 because of the time and the circumstance -- and by that I mean
6 the time of day, where you are and what you're doing, that
7 signature may appear different than when you signed your name
8 in other times? Is that a fair statement?

9 A Yes, I guess you can say that. But I know that the
10 signature on one exhibit --

11 Q Sir, just answer my question. You're going to have a
12 chance again. But my question is really quite simple -- and I
13 think the record speaks for itself.

14 Do you have a driver's license.

15 A Yes.

16 Q Is there a signature on the driver's license? You don't
17 have to take it out. Is there a signature on the driver's
18 license?

19 A I'm pretty sure.

20 Q You don't have to look at it, sir. You should look at
21 it, I shouldn't say that.

22 A Yes.

23 Q Is that a copy of your signature?

24 A When you sign for your license?

25 Q Yes.

SYDOR-RECROSS-HALEY

2314

1 A Yes, when you sign for it.

2 Q Now on the cross examination by Mr. LaRusso, we can
3 agree, can we not, that at one point you testified rather
4 directly, if I recall, that you never used this airplane?
5 Meaning the Falcon 10. Do you remember that testimony?

6 A I remember -- remember saying that. And then after
7 further documents put in front of me, I recalled -- I remember
8 saying that I can't recall the Falcon 10. I don't know the
9 make and model of the airplanes.

10 Q Yeah, but you know the difference, sir, between a turbo
11 plane aircraft, a jet aircraft and a prop plane, is that true?

12 A Yes. I know the difference between a prop and a jet.

13 Q You were pretty assertive, were you not, sir on cross
14 examination by Mr. LaRusso that the only plane that you ever
15 flew as relates to the interaction with Phil and Tommy
16 Constantine was a prop plane. Do you recall that testimony?

17 A Until I had stuff in front of me to jog my memory.

18 Q As a matter of fact, you flew twice on -- if not a Falcon
19 10, a turbo jet aircraft, isn't that true?

20 A I flew on a lot of planes, yes.

21 Q I'll rephrase the question. There was a time where you
22 flew from Columbus, Ohio, to Kamloops, British Columbia,
23 Canada, with you and your wife and Phil Kenner, is that
24 correct?

25 MS. KOMATIREDDY: Objection. Asked and answered.

SYDOR-RE CROSS-HALEY

2315

1 THE COURT: Overruled.

2 You can answer.

3 A No. It was -- I believe it was a flight from Kamloops.
4 My wife was not on that. It was me and Phil Kenner. I
5 remember a couple of houses that we looked at.

6 Q But that was a jet aircraft you flew on, correct?

7 A Yes.

8 Q I take it, sir, before you flew that -- well, before you
9 flew on that jet aircraft, did you conduct an inspection of
10 the exterior of the aircraft, sir?

11 A No.

12 Q Did you take photographs of that particular aircraft
13 before you flew on it?

14 A Did I take a photograph?

15 Q Yes, sir.

16 A I might have taken a cell phone picture. But I'm not
17 sure that I did.

18 Q With reference to the photograph of the aircraft shown to
19 you in the e-mail by Mr. LaRusso, it's clear that that depicts
20 a jet air craft, does it not?

21 A The document that he showed me, yes, it is a jet plane.

22 Q Can you state here, under oath today, that that
23 photograph that you saw is not a photograph of the jet plane
24 you flew on with Phil Kenner?

25 A I can't sit here and say if that was one or not. I can't

SYDOR-RE CROSS-HALEY

2316

1 remember what the inside of that airplane looked like that I
2 flew on.

3 Q As a matter of fact, you went on it twice. Do you have a
4 memory of -- or do you have a memory -- withdrawn.

5 Do you have a memory, sir, of flying on a jet
6 aircraft, as opposed to a prop aircraft, more than once
7 through the efforts of Phil Kenner and/or Tommy Constantine.

8 A Yes. If I needed an air -- like if I wanted to fly with
9 my family or a get a private, I would contact Phil Kenner.
10 And I'm not sure if he would contact Net Jets or another
11 company or the Falcon.

12 Q Well, do you have a specific memory today, sir, that --
13 withdrawn.

14 With reference to the Falcon 10 aircraft that you
15 saw depicted in the photograph given to you by Mr. LaRusso, do
16 you know one way or another, as you sit here today, how many
17 times you knew on that particular aircraft?

18 MS. KOMATIREDDY: Objection. Asked and answered.

19 THE COURT: Overruled. He can answer.

20 A On that particular plane, I'm not sure how many times.

21 Q Okay. Now, you were asked questions on cross examination
22 by Mr. LaRusso as to the conversations you had with Attorney
23 Stolper. Do you recall the questions about your communication
24 with Attorney Stolper?

25 A Yes.

SYDOR-RECROSS-HALEY

2317

1 Q I believe that you testified on redirect that Bryan
2 Berard was one of those persons who was part and parcel of the
3 efforts to figure out where all the money went.

4 A Yes.

5 Q By contacting Attorney Stolper, is that correct?

6 A I believe so, yes.

7 Q Sir, isn't it true that in addition to Bryan Berard, Phil
8 Kenner was also part of that effort to engage Attorney Stolper
9 for the purpose of figuring out where all the money went?
10 Isn't that true?

11 A I believe so.

12 THE COURT: Mr. Haley, it's 4:30. I'm not making
13 him come back tomorrow.

14 MR. HALEY: Yes, sir. I recognize that, Your Honor.

15 Q You were asked on redirect a very specific question
16 about, once again, the contents of the binder that you
17 received from Phil Kenner. As I recall, you testified you do
18 have a recollection that nowhere contained in that binder was
19 the loan transaction history that the government showed you,
20 is that correct?

21 A I don't believe that I was firm in that statement. I
22 believe I said I don't believe it's in there.

23 Q So by that answer, this loan transaction history, as best
24 you know, may or may not have been in that binder?

25 MS. KOMATIREDDY: Objection. Asked and answered.

SYDOR-RECROSS-LaRUSSO

2318

1 THE COURT: Overruled. He can answer.

2 A Yes.

3 MR. HALEY: May I have one extra minute?

4 I have no further questions.

5 MR. LaRUSSO: Two questions.

6 RECROSS EXAMINATION

7 BY MR. LaRUSSO:

8 Q The government came after I finished, asked you a
9 question. Did Mr. Constantine offer money back to you with
10 regards to Eufora, do you recall that, and you said no?

11 A I believe so.

12 Q Well, you never asked Mr. Constantine for money back,
13 isn't that correct?

14 A I don't think I personally asked him, no.

15 Q Since the shareholders meeting that we discussed where
16 you were participating by telephone, you never spoke to
17 Mr. Constantine again about your investment, is that correct?

18 A I don't believe so.

19 MR. LaRUSSO: No further questions.

20 THE COURT: You may step down, Mr. Sydor. Thank
21 you.

22 (Witness excused at 4:45 p.m.)

23 THE COURT: Okay. We'll reconvene tomorrow morning
24 at 9:30. Don't listen or read anything about the case. Have
25 a safe trip home. Have a good night.

1 (Whereupon the jury leaves the courtroom.)

2 THE COURT: I want to make an observation. There's
3 no way that should have taken the whole day. It just
4 shouldn't have happened. I've been a judge for nine and a
5 half years. I was a litigant for many years before that.
6 These witnesses are just taking too long. It's compounded by
7 the fact that when we had jury selection and I asked the
8 attorneys how long the case is going to take, I asked my law
9 clerk to confirm my recollection, and she confirmed it, that I
10 told the jury five to six weeks. I believe the lawyers are
11 trying to tell me it could be as little as four weeks. To err
12 on the side of caution, I decided to tell the jury five weeks.

13 And regardless of whether or not these witnesses are
14 taking too long, you're certainly taking too long. If you
15 believe that your questioning of these witnesses are going to
16 be as long as it has been, there's no way that experienced
17 attorneys should step in my courtroom and tell me that a case
18 is going to be five weeks long. I rely on that
19 representation. I have no way of knowing. I don't know how
20 long the case is going to take. I rely on the lawyers to tell
21 me that. We're in a situation here where this is so far off
22 your estimate, it's mystifying to me. I have no explanation
23 for why you thought this would be a five-week trial.

24 I will say a couple of things. And I'm only picking
25 these out. Everybody's at fault for this delay. I'm not

1 suggesting -- obviously, the questioning has to be thorough.
2 Mr. Kenner's and Mr. Constantine's liberty is at stake. So
3 I'm not suggesting -- to me, speed is not the most important
4 thing. It's most important to me that everybody gets a fair
5 trial. That's why I don't put time constraints on attorneys.
6 I want Mr. Kenner and Mr. Constantine and the government to
7 feel they got to present whatever evidence they want presented
8 before the jury. That's why I preside as a judge.

9 But people's time are just being abused in this
10 case. The questioning is taking way too long. There are two
11 examples. Again, just by singling these out, I don't want to
12 suggest them for their own reasons but these two stick out in
13 my mind. One of them is the way documents are being used to
14 try to refresh witnesses' recollection. We spent hours,
15 hours, not minutes, hours of this trial showing witnesses
16 documents that everyone in the courtroom sitting here knows
17 there is zero chance that the witness is going to be refreshed
18 by the document.

19 And it's not in evidence. The government sometimes
20 suggests to make reference to a document to get it into
21 evidence. Because in many instances, the document that is in
22 evidence already, has been shown to the jury at least three,
23 four, sometimes five times, and yet it's put up again. The
24 witness says I have no recollection of that. The witness is
25 shown a document, says I have no recollection of that. And

1 then the witness read one paragraph of the document and says
2 it doesn't refresh my recollection. And then it's read more
3 of the document. We waste hours on documents that the jury
4 has seen. There's no strategic reason to put it before the
5 jury multiple times. And in fact, there's no dispute that
6 that e-mail is authentic, that, in fact, it happened.

7 So even if by some crazy -- that the witness
8 authenticated ten times, there's no recollection of it, even
9 if you were to say oh, yeah, there's no recollection of that
10 e-mail, all you want to establish is the fact that the e-mail
11 is sent, which is what we knew weeks ago. And that takes
12 hours to do.

13 So you know, riot control. Can I control how much
14 refreshing of recollection a lawyer tries of a witness? Yes.
15 Again, I like to give lawyers leeway. But I can't let this go
16 on endlessly. We're never going to finish the trial at this
17 pace. We're going to go into July. This trial's going to end
18 in end in mid-July the way we're going. We got one witness
19 done today.

20 How many more witnesses does the government have?
21 How many witnesses do you have.

22 MR. MISKIEWICZ: Off the top of my head, I can't
23 pinpoint. We probably have at least a dozen witnesses.

24 THE COURT: Okay. So at this pace, that means
25 12 days. Who knows? Mr. Gaarn, who knows how many days he'll

1 be on the stand for. I've never experienced anything like
2 this as a judge. I'm going to think about it tonight, what I
3 need to do to try to persuade both sides that this is taking
4 too long. The government is over objecting. The government
5 is over objection. And every time the government objects, the
6 witness say every single time, virtually, can I have the
7 question read back, or repeated to them. And again, each time
8 that happens, over the course of a five-week trial, we're
9 talking about hours.

10 Just a few examples. The government objected to
11 when he was asked what he understood the nature of the lawsuit
12 to be between Mr. Kenner and the secretary. There was an
13 objection on relevance grounds. Relevance grounds. The
14 government is arguing that that lawsuit had nothing to do with
15 the purpose of Global Settlement Fund. So how can it be
16 irrelevant what he was told or what he understood or may or
17 may not have consented to with respect to that lawsuit.

18 I was mystified by the objection on relevance as to
19 what he was told or what he understood his money was going to
20 and what that lawsuit related to. I overruled that objection.
21 And then when he was asked what statements were made, what
22 conversations that he had with her regarding his investment,
23 the objection was on hearsay grounds.

24 Obviously whether or not the statements she was
25 making were true or not is not the purpose of that

1 questioning. The purpose of the questioning was to try to
2 establish that she had some involvement, potentially, in
3 connection with Mexico or Hawaii and the communications
4 between them regarding that.

5 Then when he was asked about the e-mail that related
6 to that, the government objected the record speaks for itself,
7 which, in certain circumstances, is true. But when someone
8 writes an e-mail and the lawyer asked him, when you said this
9 did you mean that? Sometimes the witness needs to explain
10 what the e-mail, what they meant by the e-mail. And that's a
11 perfectly proper question.

12 So we had a succession of government objections, and
13 this is an example that I wrote down, where another one was
14 what were you told, what were the discussions about taking
15 control over Eufora. The government objected on hearsay
16 grounds. I've allowed that testimony in for days. For days
17 we've had questioning about whether or not there was an effort
18 to take over Eufora. For whatever reason, the government
19 decided to insert the hearsay objection. The purpose of that
20 had nothing to do with the truth of the matter. It's whether
21 or not the bias of the witnesses shows that they were making
22 an effort to commit some fraud that related with respect to
23 Eufora, but they wanted to get the company for themselves.
24 That's what was motivating their efforts, not any type of
25 fraud.

1 So that's the exception to the hearsay. It should
2 be apparent. It wasn't apparent. It should be apparent
3 because I've allowed that testimony in for three weeks now
4 when all the other witnesses were asked about it. So every
5 time the government objects, I don't mind overruling the
6 objection, but I will say overruled, overruled, overruled.
7 But it adds a lot of time, and the witnesses then need to have
8 the questions read back.

9 So those are just two examples. There are many,
10 many things contributing to the delay. I think it is
11 completely unnecessary. Again, I'm requesting, as I have
12 before, I don't like to put time constraints, I don't like to
13 shut people down, but I'm encouraging you to go back and look
14 at how you're conducting the questioning to see whether or not
15 you are wasting the juror's time. I don't know if you looked
16 at the jurors today, but they didn't look like they were
17 mesmerized by the questioning for seven hours, for seven hours
18 with the morning and afternoon break of this witness. I don't
19 think that's seven hours worth of information was given to
20 them, input into this case. That's all I have to say.

21 Okay. With respect to Mr. LaRusso's documents.

22 MR. LaRUSSO: Judge, can I just be heard briefly on
23 that. It might not have been clear. First of all, these
24 e-mails, I was objecting at the side-bar to basically -- the
25 objection to these documents possibly being forged or

1 doctored. These e-mails come right off of the server. They
2 are not coming off of Mr. Constantine's computer.

3 THE COURT: We know they come off a Google server.
4 I don't understand that the government or anyone can just go
5 onto Google server and access e-mails.

6 MR. LaRUSSO: They can go on Google with his
7 account. Those e-mails are from the Google server, that
8 account. There's no way you can doctor it. It's impossible
9 to doctor these e-mails. In addition --

10 THE COURT: Your client has lots going. The
11 government hasn't suggested -- are you suggesting that the
12 government can go on Google and see his account. They don't
13 have the ability to do that.

14 MR. LaRUSSO: We can do it right now. I can go on
15 the Internet and show this exact same e-mail that we're trying
16 to introduce. And the other point, Judge, this was a very
17 important witness from our point because he couldn't remember
18 many of the purposes for the Global Settlement Fund. We took
19 the Court's admonitions to try to cut back. One of our
20 exhibits is C-127. It's already in evidence through Michael
21 Peca, Your Honor. Exhibit C-127. This is a similar e-mail
22 that was sent to Mr. Sydor. I didn't know if I can use it
23 because it was irrelevant at that point. He was able to
24 testify to it.

25 So I curtailed the use of exhibits, Judge, to try

1 and move forward as quickly I can. But with this witness it
2 became necessary to try to refresh his recollection. And it
3 was very helpful because he finally remembered the airplane.
4 It took a little while to get there.

5 So my point is, Judge, we're trying to following the
6 Court's direction. And I apologize, and maybe we can do more.
7 And I'll try and do more. But with this witness, I felt it
8 necessary to try to get the document in, which is same thing.
9 If we look at C-127, it's the same information on the same
10 day, around the same time with Michael Peca.

11 THE COURT: Is that Peca's?

12 MR. LaRUSSO: Yeah. This one is C-127, Your Honor.
13 I don't know if you have C-127.

14 THE COURT: My question to the government on this is
15 I don't understand -- this is going back to Mr. LaRusso's
16 point. We've had dozens and dozens of Gmail e-mails come into
17 evidence without objection from the government. And then we
18 get to one or two or three, the government is objecting on
19 authentication grounds. Why does the government have any
20 objection to the others ones that these e-mails have somehow
21 been doctored? I don't understand the difference between
22 these e-mails. Mr. LaRusso just said he got it all from the
23 same e-mail account.

24 MR. LaRUSSO: That's correct.

25 THE COURT: So why does the government believe some

1 of them are not doctored and have no concern and some are
2 doctored?

3 MR. MISKIEWICZ: There has been a learning curve
4 with respect to Your Honor's ruling on a number of these
5 statements from -- out of court statements from one or the
6 other defendant. And I don't recall how or whether we
7 objected. And perhaps we objected on hearsay grounds and then
8 we learned that your ruling. I don't believe that we've -- I
9 apologize if we objected on hearsay grounds when we shouldn't
10 have.

11 Perhaps our more fundamental objection should have
12 been with Mr. Peca. And certainly we learned, throughout the
13 course of the last several weeks, that we see things that we
14 show our witnesses, they tell us -- these are not stupid men.
15 You would expect that if they were told this amount of detail
16 about these important transactions in their lives, which have
17 cost them hundreds of thousand, if not millions of dollars,
18 that they would have a sort of independent recollection.

19 The more we go through the trial and show them to
20 people, they are saying, as Mr. Sydor said, they have no
21 recollection of seeing them. Our position, therefore, and I
22 would suggest maybe this is a way of dealing with it, counsel
23 has some exhibits that have never shown up, did not come from
24 Rule 16 discovery. We have no way of really establishing its
25 authenticity. We're not here to belabor the point and drag

1 this thing out for no reason. But an e-mail or an invoice
2 printed on a piece of paper, he bears the burden of
3 establishing the authenticity of that document.

4 Time and time again when we show people things
5 afterwards, they have no memory of these things. And so yes,
6 our position is, in good faith, we think that a lot of stuff
7 was simply made up. Whether it was made up last night or made
8 up in 2011 or 2012 when the investigation heated up, I can't
9 say. But yes, we have a very good faith belief that there are
10 things entirely made up. Because these main witnesses who say
11 they've never seen things, they can't all be wrong.

12 THE COURT: We've seen ones where they absolutely
13 don't remember. And then we know from the government's own
14 documentation that they didn't respond to them. For example,
15 Mr. -- I can't remember which witness it was, on that e-mail
16 it says approved and executed, they don't recall doing that,
17 but it's clear that they did. The government's not contending
18 that's made up.

19 MR. MISKIEWICZ: I don't believe that -- there are a
20 good number of those. The post-GSF e-mails that people get
21 after they spent their money, yes, they sent it back
22 acknowledging it. With all due respect, Your Honor, I don't
23 think we fought over those e-mails.

24 THE COURT: I know. But my point is, you're
25 suggesting that when it's involving people's money and

1 millions of dollars, it must be fraud or it must not ever have
2 been sent to them because they'd certainly remember it, we
3 know in that particular e-mail that a lot of them don't
4 remember even though it's clear from the government's evidence
5 that they did respond to it.

6 MR. MISKIEWICZ: All I can ask, first of all, is the
7 indulgence to make the authenticity objection. I think they
8 bear the burden. And it's not unfair to say to them, if they
9 can't get from the witness, oh, yes, I recall seeing that,
10 then that should be the end of it instead of droning on and
11 trying to get them to submit to getting a document in that
12 they don't really have an independent recollection about.

13 Alternatively, and we could save a lot of time.
14 We've produced exhibits, we've produced prior to trial, we've
15 reproduced the same exhibits time and time again for the
16 defendants throughout the trial. If they have exhibits like
17 this, it's pretty -- we can probably eliminate a lot of wasted
18 time if they would show us what they're going to show the
19 witnesses. They know who we're calling.

20 THE COURT: It should have be done a long time ago.

21 MR. MISKIEWICZ: We got nothing. We did not get
22 anything we got nothing.

23 THE COURT: Look, the reason I wanted to table this,
24 if a witness says I don't remember seeing any of this, I
25 didn't use this e-mail account, that's not a foundation to get

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1 the document in. There's really no foundation for getting it
2 in. If you want to show the government the Gmail account so
3 they can see what's on it, they will stipulate to its
4 authenticity. That seems, to me, the most reasonable, easiest
5 way of doing it. If not, you have to authenticate it. You
6 have to call someone from Gmail to establish it's on their
7 server.

8 MR LaRUSSO: We talked about that, Your Honor.

9 THE COURT: You already heard what I said about the
10 trial. So I'm hoping that you don't have to do that.
11 Obviously I understand the importance of this document. And
12 the fact Mr. Peca had the exact document should lead the
13 government in what they believe. One, that they already
14 allowed in through Mr. Peca. That it's a fake document, I'm
15 not sure why they'd be concerned about C-127, which is the
16 same e-mail word for word. That's up to them.

17 MR. LaRUSSO: For the record, Mr. Norstrom also got
18 it. This is not a document --

19 THE COURT: Look, I can only rule on the
20 authentication issues. That is not a way to authenticate it.
21 I tabled it for discussion because I don't want the government
22 to unnecessarily object to the authenticity of documents that
23 they don't need to. But I'm hoping that you can find a way to
24 satisfy them without have to call someone from Gmail.

25 MR. LaRUSSO: I don't know I can. I will take the

1 Court's suggestion. I usually work the night before on
2 witnesses that are going to be called. I will narrow the
3 information that I'm going to try and elicit from them. At
4 that point, usually in the evening hours, I know what
5 documents I'm going to use to cross examine them. I'll try
6 and make them available to the government as soon as I can. I
7 know today I made them available right before I began cross.
8 Not even all of them. I kept one or two of them
9 inadvertently. But I will try -- it will be at night, Judge.
10 I don't know how I can get it to them sooner than that.

11 THE COURT: Look, I understand you're prepping as
12 you go along. You know I think you're all excellent lawyers
13 and I like all of you personally. So I don't want you to
14 think --

15 MR. LaRUSSO: I appreciate that, Judge.

16 THE COURT: I'm just observing this. And I'm
17 observing the jury and I'm observing how long it's taking.
18 And I just know it's taking too long. From my own experience,
19 I can't pinpoint it. It's not one person. Everyone is
20 contributing to it. Knowing that, you can find ways of doing
21 it without the e-mail. I want you to be as thorough as you're
22 being, but find ways to save time. It's really just an
23 argument that you're making. You will have as much time as
24 you need for summations. If you want to read the e-mail and
25 read it word for word in summations, I certainly will allow

1 you to do that. Keep all of that in mind. I trust that you
2 will do your best, okay.

3 MR. MISKIEWICZ: Your Honor, in that vein, in that
4 spirit, there is a document that we intend to use for
5 Mr. Gaard coming up tomorrow. It's the Eufora agreement that
6 Mr. Constantine and others signed. We have been advised by
7 counsel, although I didn't personally have the conversation,
8 that they have the signed agreement, the pledging of the
9 patents to a third party. We have unsigned copies that
10 document.

11 Just to move things along, rather than issue a
12 subpoena, we asked for a copy. We were told no, you can't
13 have it. Well, I'm asking Mr. LaRusso and Mr. Haley to turn
14 it over, give us a copy of the signed pledge agreement.
15 Meaning, the agreement by which Mr. Constantine and Eufora
16 were going to pledge the patents to a third party.

17 We've heard commentary by some of the witnesses that
18 they were never allowed to see the agreement. This is the
19 agreement they were not allowed to see. Mr. Gaarn, I believe,
20 will be able to testify about it.

21 THE COURT: Do you believe the defense is going to
22 introduce it?

23 MR. MISKIEWICZ: I don't know if they're going to
24 introduce it. It would just speed things up if we could get a
25 copy, show it to Mr. Gaard and move it into evidence.

1 MR. LaRUSSO: Judge, just for the record, I have no
2 problem with a document that both sides agree is authentic. I
3 don't care if I have it if they have it. If it's true and
4 accurate, I'll put it in evidence with no objection
5 whatsoever. But unfortunately, I was asked about this and I'm
6 not even sure we're talking about the same document. But I
7 will talk to Mr. Miskiewicz, clarify it so I know what we're
8 looking for. I will personally take responsibility and look
9 for that document. If we have it, we'll turn it over so that
10 they can use it to expedite the trial.

11 MR. MISKIEWICZ: Thank you.

12 THE COURT: Mr. Haley, I don't want -- my comments
13 in terms of the pace today, I understand, based on what you
14 said with regard to the signatures that you were somewhat
15 surprised by what he said. I understand why you wanted to
16 have the witness go back through the exhibits. And the
17 government objected, I overruled the objection. So I
18 understand when you're hit with something you may not expect,
19 or when the government obviously pointed out you read part of
20 the grand jury testimony, but I understand why that was
21 necessary.

22 MR. HALEY: Thanks, Your Honor.

23 If I may, in the same vein, I would state for the
24 record that when the government says they, every document that
25 I've identified for the purpose of any of my questioning of

1 any witness to date has been provide with Rule 16 discovery.
2 So I don't think the government's missing anything.

3 Judge, what I am concerned about is, you're correct,
4 Judge, I likely would have had probably three questions of
5 this witness had I not heard that litany of redirect that I
6 was totally, utterly surprised with. I was aware and prepared
7 for this trial for some period of time, anticipating what
8 witnesses would be testifying as government witnesses in a
9 fashion that suggested forgery, implication being, of course,
10 Phil Kenner named.

11 Here is my concern, Judge. We now have three or
12 four other government witnesses, Ranford, Rucchin, and one or
13 two others that have Northern Trust lines of credit.

14 THE COURT: Let me ask the Government about that.
15 I'm not even sure why it came out on redirect as opposed to it
16 didn't come out on direct. Why take them out on redirect and
17 not direct? It's not the only document.

18 We do have to try to have some effort -- I
19 understand sometimes a witness may say something you don't
20 expect them to say about their signature. And I don't expect
21 the government will necessarily show every single document in
22 the world to each witness.

23 But why did that come out on redirect? And your
24 other witnesses, you're going to suggest their Northern Trust
25 signatures are not their's, based on what you know now.

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1 MS. KOMATIREDDY: Your Honor, with Mr. Sydor it was
2 part of our affirmative case to prove up the forgery. His
3 testimony, when he looked at those signatures, he -- there was
4 some that he couldn't remember. He couldn't say one way or
5 the other for sure whether he had signed it. We had no desire
6 to make that part of our affirmative case. The only reason we
7 did it on redirect was because it was raised on cross. If it
8 wasn't raised on cross we wouldn't have raised it at all.

9 THE COURT: There were a couple of them where he
10 said I'm not sure whether it is or not. Then what he said on
11 cross, there was some he started saying they're definitely
12 not. I'm confident of the term he used, but it was stronger
13 than saying I'm not sure one way or another.

14 MS. KOMATIREDDY: Mr. Haley, the way he asked was,
15 Does that appear to be your signature? And Mr. Sydor
16 answered, said, It appears to be my signature. And stopped.
17 He stop he wouldn't allow him to elaborate on the cross
18 question. So I followed up. I expected the answer to either
19 I can't say for sure or no. It wasn't part of our
20 presentation.

21 THE COURT: I'm asking about these other witnesses.
22 Do you believe they're going to say that's not their signature
23 on the documents or they're not sure?

24 MR. MISKIEWICZ: What we will endeavor to do for the
25 rest is identify for the defense, after we do final prep

1 before these folks get on the witness stand, say what their
2 position is.

3 THE COURT: Are these documents that were on the
4 Kenner computer?

5 MR. MISKIEWICZ: Well, some of them are. Some of
6 them are many generations old, copies that appeared in the
7 arbitration. Or one or the other pieces of the civil
8 litigation. And when we have shown them to people, they've
9 said it looks like it. I might be. I don't remember.

10 We have told them we have a witness who witnessed
11 Mr. Kenner forging signatures. And as they also know from our
12 Rule 16 discovery, we have an expert ready to testify,
13 probably the week after -- next week, John Osborn, who will
14 say the funding agreement by which \$12 million was diverted to
15 Mr. Constantine has a phony signature. A phone signature of
16 John Kaiser. So where we've specifically been able to
17 identify forgeries, we did tell them.

18 THE COURT: In the preparation of witnesses, if they
19 affirmatively say this is not my signature as opposed to
20 saying it may be, if he affirmatively says this is definitely
21 not my signature, let Mr. Haley know if he doesn't know
22 already so he can prepare that.

23 MR. MISKIEWICZ: We will. The intent here is not to
24 sandbag and open the door -- what has -- I understand what
25 happened was damaging to their defense. But we have prepared

1 witnesses, asked them repeatedly. They're talking about
2 things that happened years ago. They do say -- they
3 equivocate. Now, Mr. Sydor equivocated, but it's not because
4 we were intending to sandbag Mr. Haley.

5 THE COURT: I didn't say -- if you were trying to
6 sandbag him, you would have done it on direct. So I'm not
7 suggesting that it was an effort to sandbag him. I want him
8 to have time to prepare.

9 MR. MISKIEWICZ: Yes, Your Honor.

10 MR. HALEY: Your Honor, I did not accuse the
11 government, nor do I accuse the government of sandbagging.
12 But I do stand by my earlier statement to this Court that from
13 the defense perspective, we covered this months ago. My
14 memory was --

15 THE COURT: The difference is, though, when a
16 witness says I'm not sure if that's my signature or not, our
17 discussion is what he said on direct. When the witness said
18 that's a forgery, that's definitely not my signature. The
19 government knew that. We discussed it, we will turn it over.
20 What we've seen is a lot of witnesses that do say I'm not
21 sure. I can't tell from the copy. It looks like, it appears
22 to be. Obviously the government is not going to disclose that
23 to you as a fraudulent document because it was not indicated
24 it's a fraudulent. I think what happened here is, on redirect
25 he became a little stronger about some of the signatures. I'm

1 not sure why that was.

2 MR. HALEY: Well, the question I guess for the jury
3 to decide, given the way he presented it, is whether he had a
4 choice. That's an argument that I will save for my summation.
5 I would wholeheartedly agree, Your Honor, that if a witness --
6 I'd walk away when a witness says I can't tell whether that's
7 my signature or not. I would walk away. And I wouldn't
8 expect the government in Rule 16 disclosure to say this
9 witness is going to testify I can't tell one way or another.

10 I do expect and that's why I demanded early on, that
11 type of disclosure. And again, Judge, my only concern,
12 Judge -- I know it's getting late -- to the extent before
13 Mr. Ranford takes the stand, the government walks in and says,
14 oh, we just spoke to Mr. Ranford this morning. He's going to
15 this is a forgery, this is forgery, this is a forgery.

16 By the way, these are Northern Trust documents.
17 These are documents that were not, if you will, provided by
18 the defendants or manufactured by the defense. And that type
19 of document, given the government's theory in this case, that
20 he is accessing lines of credit without authorization, doing
21 so in a fraudulent manner, to the extent that they're going to
22 then proffer evidence like they did, forgery, forgery,
23 forgery, it's not sandbagging, Judge, but it's a matter of
24 fundamental fairness and the defense to prepare for that type
25 of testimony.

1 Judge, thank you for listening.

2 MR. LaRUSSO: If I can, I'm sorry to bother. I
3 don't want to have the issue arise tomorrow. Those e-mails
4 that are still open, the Court hasn't decided on. Obviously
5 we feel many of them are significant to our case, particularly
6 129-A which talks about the invoice that Mr. Sydor was
7 responsible for paying. I'll tell the Court there was no
8 charge for the plane. That's quite a substantial charge
9 because he was an owner. That's our argument.

10 What I am going to do, if the government accepts my
11 offer, if we can access Google mail now on these five
12 exhibits. Let them view us opening them up and then print out
13 the copies that we tried to introduce, and then they can make
14 a decision. I'll ask them to make a decision now so that they
15 know there's no intent in any way to doctor those exhibits.
16 That's an offer I was just thinking of making. I hope they
17 accept it. Otherwise I may have to go through Google.

18 THE COURT: I want the government to know, I think
19 the government was suggesting at side-bar that someone can go
20 in Gmail and doctor an e-mail. I don't know whether that's
21 the case or not. But to backdate an e-mail and make it appear
22 that it sent an e-mail on a certain date or not, I have no
23 idea if that's possible.

24 If, in fact, it is a Gmail account, and the
25 government is willing to stimulate, if they call someone from

1 Gmail saying we found this document on our server, it's coming
2 in, is there a way the government can cross examine the Gmail
3 witness and have them explain how someone can alter an e-mail.
4 I want the government know, to the extent they're not willing
5 to consent to the authenticity, that that's the level of
6 authenticity I will require on the Gmail. If Gmail say we
7 searched our records and these are on our server, we will
8 allow it in.

9 MR. LaRUSSO: It is actually Google, Judge.

10 THE COURT: Is Gmail Google? Showing my ignorance.

11 MR. LaRUSSO: Judge, I just got that.

12 MR. HALEY: Judge, I knew that.

13 THE COURT: Have a good night.

14 (Matter concluded at 5:05 p.m.)

15 (Matter adjourned to June 2, 2015, at 9:30 a.m.)

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GOVERNMENT EXHIBIT 5004	2172
GOVERNMENT EXHIBIT 6603	2177
DEFENDANT'S EXHIBIT 64 WAS RECEIVED IN EVIDENCE	2195
DEFENSE EXHIBIT C-139 IN EVIDENCE	2242
DEFENSE EXHIBIT C-138 IN EVIDENCE	2244
DEFENSE EXHIBIT C-144 IN EVIDENCE	2250
DEFENDANT'S EXHIBIT C 141 WAS RECEIVED IN EVIDENCE	2252
DEFENDANT'S EXHIBIT C 125 WAS RECEIVED IN EVIDENCE	2255
DEFENDANT'S EXHIBIT C 32 A WAS RECEIVED IN EVIDENCE	2260
DEFENDANT'S EXHIBIT C 126 WAS RECEIVED IN EVIDENCE	2263
DEFENDANT'S EXHIBIT C 128 WAS RECEIVED IN EVIDENCE	2272
DEFENDANT KENNER EXHIBIT 74	2304

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